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Advisory Council
on the Status of
Women

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Issues in Sexual Assault Sentencing in Nova Scotia

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PREFACE

The Nova Scotia Advisory Council on the Status of Women was established in 1977 in response to recommendations of a task force appointed during International Women's Year in 1975. The Council is mandated to monitor women's issues and to act as an advisory body to the provincial government.

Specifically, it is legislated to advise the Minister upon such matters relating to the status of women as are referred to the Council for consideration by the Minister Responsible for the Administration of the Status of Women Act, and to bring to the attention of the Minister matters of interest and concern to women.

In carrying out its duties, the Council may:

- receive and hear petitions and suggestions concerning the status of women;
- undertake and recommend research on matters relevant to the status of women;
- recommend and participate in programs concerning the status of women;
- propose legislation, policies, and practices to promote equality of opportunity and status;
- publish reports, studies and recommendations.

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EXECUTIVE SUMMARY

The Nova Scotia Advisory Council on the Status of Women has long expressed concern regarding the apparently low sentences being imposed upon offenders for crimes of violence against women, the lack of police and judicial sensitivity to victims of sexual assault, and the pervasiveness of sex role stereotyping for victims and offenders involved in the court system.

This report examined approximately 200 sexual assault cases through data provided by the Halifax Police Department, the Department of Attorney General, the Nova Scotia Law News, the Nova Scotia Reports, and newspaper coverage of sexual assaults in the province. In addition to the charge and sentence for these cases, judges' remarks were examined where available.

Sentencing patterns that can be discerned from this review can lead to two conclusions. First, sentences for sexual assault are low compared to the maximum outlined in the Criminal Code, with average sentences studied here (with the exception of newspaper reports) remaining not only well below the maximum of 10 years for simple sexual assault, but under two years.

Second, the sentences handed out for sexual assault are not consistent, and many vary greatly from judge to judge, and from trial to appeal. Even the sentence for the most violent crime can be mitigated by the offender's age, employment status or other factors, resulting in a light sentence.

Summary of Recommendations

The Nova Scotia Advisory Council on the Status of Women recommends:

- that a concerted effort be made to ensure consistency in sexual assault sentencing across Nova Scotia;
- that the length of sentences for sexual assault become more consistent, and that the maximum sentences outlined in the Criminal Code be considered more important than precedents set by past cases;
- that the government of Nova Scotia commit more resources for public education on the nature of sexual assault and its impact on victims and their families, and especially for the provision of comprehensive support services for victims of sexual assault;

- that relevant government departments (Attorney General/Solicitor General, Community Services, and Health and Fitness) undertake an evaluation of the effectiveness of treatment programs for sexual assault offenders;

- that the government of Nova Scotia urge the federal government to establish a forensic treatment centre for sexual assault offenders in Nova Scotia;

- that all judges, Crown prosecutors, law enforcement officers and corrections personnel in the province of Nova Scotia receive, on a mandatory basis, education on the nature of sexual assault, the impact of sexual assault on the victim, the recidivism rate and the effectiveness of treatment for sexual assault offenders;

- that the offender's employment record, family status, relationship to victim, and absence of criminal record not be considered mitigating factors in sexual assault sentencing;

- that the Department of Attorney General implement a tracking system in which details of all sexual assaults and sexual offences are followed from the victim's reporting of the incident to the final actions taken by police, Crown prosecutor, and judiciary;

- that all victims of sexual assault be granted the right to file a victim impact statement. Assistance in preparing impact statements should be provided, if required. The statements should be presented to the court by the Crown prosecutor or the victim. The use of such statements should become consistent in the courts; and

- that the Department of Attorney General appoint a full-time Crown prosecutor specializing in prosecuting cases of sexual assault. This individual should also assume responsibility for peer education.

INTRODUCTION

Several recent media accounts have related that the number of sexual assaults before the courts is on the rise. The Service for Sexual Assault Victims in Halifax reports a 165 percent increase in client calls to its office between 1989 and 1990. The Criminal Injuries Compensation Board identifies similar increases in the number of sexual assault victims coming before it.

In addition, we have been hearing the concerns of women in Nova Scotia regarding the apparently low sentences being imposed upon offenders for crimes of violence against women, the lack of police and judicial sensitivity to victims of sexual assault, and the pervasiveness of sex role stereotyping for victims and offenders involved in the court system.

> The victim, a woman, and the respondent had been having a friendly relationship for over a year prior to these events. She came to visit him at his apartment about 2:30 o'clock in the morning of August 30, 1986. When she arrived at the top of the landing leading to the respondent's apartment he hit her in the chest with his fist and knocked her to the floor. He administered mouth-to-mouth resuscitation until she regained some degree of consciousness. Then he proceeded to pound her even more with blows to the face and chest and made some attempt at strangulation. Her face was bleeding and she suffered a broken nose. The second offence occurred when he took the victim into his apartment and sexually assaulted her.
>
> [...] The trial judge considered this was an isolated incident in an ongoing relationship arising from the anger and hostility of the respondent with no evidence of emotional or psychological harm to the victim.
>
> [The judge said] "the conduct of the appellant, when viewed in isolation, warrants a sentence in the range of three years' imprisonment. However, in the case of this appellant, it is his first offence. He is thirty-one years old, with no serious prior criminal record, and the offence was out of character considering the one and a half years of ongoing relationship between the appellant

> and the victim. These are mitigating factors to be considered and, in our opinion, support a sentence to be served in a provincial institution [two years less a day]."[1]

The case cited above is representative in that it indicates some of the factors taken into consideration by Nova Scotia judges when sentencing sexual assault offenders, such as the relationship between the victim and offender, the perception of "harm done", the age of the offender, and the presence or absence of a criminal record.

In an effort to examine sentencing patterns, approximately 200 cases of sexual assault were examined for this report, 64 in some detail. The Halifax Police Department provided information on charges laid in 1989 and 1990; the Department of Attorney General on dispositions made in provincial courts, 1988 through 1990; and reported and unreported cases noted by the Nova Scotia Law News, primarily from 1983 to the present, were examined.[2] Newspaper clippings for 1990 and 1991 provided some material.

The Halifax Police Department was cooperative and accommodating in providing information, but as its records are filed by accused/offender rather than by charge laid, compiling sexual assault statistics proved time-consuming. Furthermore, since the process of going from complaint to final disposition can often take several years, only a handful of charges laid in 1989-90 were accompanied by sentencing information. Because of the limited usefulness of gathering sentencing information in this manner, and because of time constraints, other police departments throughout the province (including independent municipal forces and municipal, provincial and federal RCMP offices) were not contacted.

The Department of Attorney General has an excellent information retrieval system in JOIS (Justice-Oriented Information System). However, its data is limited to Provincial Courts. Another important limitation is that not all Provincial Courts are automated and some were automated mid-way through a year. Therefore, the information gathered from this source does not represent the total number of sexual assault cases heard in Provincial Courts in Nova Scotia but only the number heard since linking into the JOIS system.

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[1] R. v. Brun (1987). See Appendix A for case notes and complete citations (arranged alphabetically by last name of offender). The case notes will be more or less complete, depending on the source used.

[2] The "reported" cases are also recorded in the Nova Scotia Reports.

Cases reported in Nova Scotia Reports were valuable in the detail they provided, particularly when judges specified the mitigating or aggravating factors they were considering in sentencing. However, as the Public Legal Education Association of Nova Scotia warns, "Only ten to fifteen percent of all decisions are reported...."[3] The Nova Scotia Law News gathers reports which are available in the library of the Nova Scotia Barristers' Society. These two sources provided detailed information especially regarding Nova Scotia Supreme Court appeal judgements, which in turn often made specific reference to the County or Provincial Court sentencing decision at the original trial or sentencing hearing.

Newspapers have in the past been generally considered an unreliable source for gathering sentencing information, assuming they would focus on "unusual" cases as being more interesting to their readers. Studies may even use this assumption as a basis for determining media bias, examining not if but why the media coverage of sexual assault cases is dominated by "outrageous" crimes with "excessively lenient" sentences.[4] However, one study that had access to Finger Print System Sheet (FPS, an RCMP fingerprint-based data system) showed that contrary to the notion that newspapers highlight serious offences and "low" or "lenient" sentences, the newspapers' very interest in the more "horrendous" crimes skews the sentencing pattern upwards.[5] For example, relying on newspaper information only, the public would be led to believe that 47 percent of sexual offenders are sentenced to federal penitentiary, while FPS shows only 10 percent are given two years or more. According to FPS, the largest percent of sexual assaults (53 percent) result in provincial sentences, and 28 percent in suspended sentences. The table is reprinted below.

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[3] Public Legal Education Association of Nova Scotia (1986) p. 37.

[4] See for example Rosenfeld (1988); Roberts (1990a).

[5] Roberts (1988).

TABLE 1
Dispositions
(By Percent)

	Fine	Probation	Suspended Sentence	Provincial Term	Federal Term	Other
FPS Court Data*	5	4	28	53	10	--
Media Sample**	2	9	2	35	47	5

* N = 2,186; data gathered 1983-84
** N = 81; data gathered 1984-85

This study used newspaper clippings to provide material in addition to the other more official sources, none of which can claim to present a total picture of sexual assault sentencing. When judges comments are quoted through newspapers rather than directly from court transcripts, the source is noted in the text.

As noted by the Department of Justice Canada's 1987 report on sentencing patterns, in describing difficulties in compiling data, "obtaining a rational picture of sentencing is a time-consuming and labour-intensive exercise."[6] Sex offenders may be charged for criminal negligence causing death[7] or for murder, as in the widely reported case where a sex offender killed a young man then raped a 17-year-old woman.[8] It is also possible that charges would be reduced, for example, to common assault.[9] For this reason, sophisticated statistical analysis is difficult, if not impossible.

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[6] Department of Justice Canada (1987) p. 1.

[7] As was one offender studied in Solicitor General (1986) p. 60.

[8] Boudreau, as reported in the Daily News, January 18, 1991.

[9] As was one case in the data provided by the Halifax Police Department.

GATEKEEPING

One of the features of the process of sentencing sexual assault offenders is the gatekeeping that occurs at every level of the system--in other words, cases are prevented from reaching the courtroom by a number of factors. In a research report for the Canadian Sentencing Commission, Cousineau states that

> [j]udges, juries, prosecutors and police use their discretion in ways that mitigate the severity of the law. With some offences, they may just refuse to apply a statute altogether. This may be especially true in cases where they can identify with the offender.[10]

Charges are laid in only about half of all **reported** sexual assault cases (see Table 2).

The Victim

Many sexual assault cases are never counted in sexual assault statistics, depending on whether or not the victim reports the case to the police.[11] A 1984 study by the Department of Justice Canada showed that 71 percent of sexual assault victims in Halifax-Dartmouth did not report the crime.[12]

If a woman thinks the police won't believe her because, for example, the assailant is an old friend, or if she is frightened of repercussions because the assailant has threatened her or her family if she tells anyone, she may not report the crime. Along with fears of reprisals,[13] victims report fear of police and the

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[10] Cousineau (1988) p. 116.

[11] Women are at seven times the risk of sexual assault as men: Statistics Canada (1987) p. 6. Approximately 90 percent of sexual assaults involve female victims: Solicitor General of Canada (1985) p. 2.

[12] The average for all seven cities surveyed was 61.5 percent. A total of 61,000 respondents were surveyed in seven cities across Canada. Department of Justice Canada (1984) pp. 10-11.

[13] Reported in 38 percent of cases involving female victims of crimes of violence. Statistics Canada (1990) p. 8.

TABLE 2

SEXUAL ASSAULTS IN NOVA SCOTIA
1990

Charge	Total Reported/ Known	Unfounded[1]	Cleared By Charge[2]	Adults Charged		Juveniles Charged	
				Male	Female	Male	Female
Aggravated Assault	10	2	5	6	0	1	0
Assault With Weapon	23	5	10	8	0	2	0
Sexual Assault	1176	164	517	316	4	57	0

SEXUAL ASSAULTS IN CANADA
1990

Charge	Total Reported/ Known	Unfounded[1]	Cleared By Charge[2]	Adults Charged		Juveniles Charged	
				Male	Female	Male	Female
Aggravated Assault	444	49	248	208	9	16	3
Assault With Weapon	1019	102	480	408	20	36	2
Sexual Assault	31367	4799	13410	8932	138	1499	39

Source: Preliminary statistics from the Canadian Centre for Justice Statistics, 1990.

[1] "Unfounded" means that the police investigation has established that a crime did not happen or was not attempted.

[2] "Cleared by Charge" means that at least one charge is laid by the police against at least one person in connection with the offence.

courts as a major reason not to report an assault.[14] A woman may also not report the assault if she blames herself, if the first response to her disclosure is not supportive, if she has a history of being subjected to violence, if there is little visible injury, or if she did not resist physically. As will be demonstrated in this report, these are some of the very circumstances judges consider pertinent in imposing low sentences.

These unreported sexual assaults affect our analysis of sentencing in two ways. First, unreported assaults do not go through the justice system and so are not counted, subject to sentencing, or available for analysis here. Second, victim's themselves may have a confused perception of what constitutes a "real rape." For example, a Winnipeg study shows that a victim is less likely to report the crime if the offender is known to her.[15] She may believe, as the justice system tends to, that a "real rape" is an offence committed by a knife-wielding stranger jumping out of the bushes. In one Nova Scotia case (reported in the newspapers), the judge said

> ...if the two were strangers, it might be considered a sexual assault, but the two were old friends.[16]

The accused was found not guilty. Other judges find friendship to be a mitigating factor and impose low sentences.[17] And so, the authors of the Winnipeg study state, "a vicious circle emerges whereby the stereotypes of 'legitimate' victims and assaults are upheld by society and the legal system."[18]

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[14] Gunn and Minch (1988) p. 16. By comparison, the primary reason given by males for failure to report assault was that the incident was too minor (67 percent): Statistics Canada (1987) p. 8.

[15] Gunn and Minch (1988) p. 47. Sexual assaults involving strangers were more likely to be reported (45 percent) than those involving acquaintances (36 percent) or relatives (22 percent): Statistics Canada (1987) p. 7.

[16] Sheppard. "Halifax man acquitted of sex assault charges", Chronicle-Herald, August 13, 1990.

[17] See for example R. v. Works (1991) and R. v. Brun (1987).

[18] Gunn and Minch (1988) p. 21.

The Police

The police are the first "judges" of whether or not, in their minds, a real assault took place.[19] "Halifax police, perhaps aware that such complaints make poor court referrals, seemed reluctant to lay charges when allegations of penetration could not be corroborated," a study published in 1988 concluded.[20] Although this study focused on the changes to sexual assault laws since 1983, the police gatekeeping process is pertinent. "In 1983 and 1984 combined, only 1 of 18 female victims said to be 'drunk', 'intoxicated' or 'on drugs' had her complaint concluded with a charge...."[21]

Studies in Vancouver and Toronto, while conducted prior to the 1983 changes to the law, showed police tended to filter out cases where the rape occurred in the offender's residence, where the victim had been drinking, where no weapon was used, where there was no extensive physical injury, where the victim and offender knew each other, where the victim was separated, divorced, or living common-law, or where the crime was not reported within one hour.[22]

As noted by Newfoundland's Provincial Advisory Council on the Status of Women, in sexual assault cases "police are influenced by the court processes in their response to the complaint; that is, how the charge will be viewed by the Crown attorney and how the judge will consider the case."[23]

The Crown and the Accused in the System

After the police "clear" the case by laying a charge, gatekeeping can occur before the case reaches the sentencing stage. In the Winnipeg study cited above, the Crown further filtered the reported cases by finding some 'unfounded', by plea bargaining the charge, or by plea bargaining the sentence.[24] In the information provided by the Halifax Police Department for this report, 29 out of the 107 reported crimes were withdrawn (18 cases) or dismissed (11 cases).[25]

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[19] Gunn and Minch (1988) p. 16.

[20] Hinch (1988) p. 112.

[21] Hinch (1988) p. 114.

[22] Clark and Lewis (1977) as summarized in Stanley (1985) pp. 23-37.

[23] Provincial Advisory Council on the Status of Women - Newfoundland and Labrador (1990) p. 7.

[24] Gunn and Minch (1988) p. 64.

In a book written for survivors of sexual assault, the author warns that "[t]he Crown counsel is not your lawyer....You may wonder why the man who attacked you gets to have a lawyer to defend him in court while you do not have anyone to defend you."[26] The Crown prosecutor, unlike the defence counsel, is not an individual's advocate.

A 1990 handbook for Nova Scotia lawyers makes this distinction quite clear. While the defence counsel's "duty to the client is to ...endeavour to obtain for the client the benefit of any and every right, remedy, and defence that is authorized by law" and the defence "may properly rely upon all available evidences or defences including technicalities not known to be false or fraudulent", the Crown prosecutor "has a duty to...seek justice, not merely to strive to obtain a conviction" and "must make sure the justice system itself functions in a manner that is scrupulously fair."[27]

In other words, while the defence is using anything and everything "not known to be false or fraudulent", the Crown is concerned with being "scrupulously fair." The Women's Legal Education and Action Fund notes the problems with such a system when, for the most part, the defendants are male and the victims female in cases of sexual assault:

> Traditionally British criminal law, the source of the Canadian Criminal Code and criminal procedure, has evolved in the direction of certain procedural rules and protections which benefit the accused. The philosophy has always been that it is better to acquit 99 guilty men than to convict an innocent man.... [B]ut these rules take on a different complexion when the crimes in question are ones which victimize women disproportionately....[28]

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[25] Having the charges dropped can mean the victim withdrew her participation before the case got to court; having the case dismissed can mean she withdrew her participation after it went to court or that there were other evidentiary problems unforeseen by police.

[26] Ellis (1986) p. 50.

[27] Nova Scotia Barristers' Society (1990) pp. 41-42.

[28] Lennon (1990) p. 5.

As noted in the Canadian Bar Review, "the Crown must prove the existence of a negative state of mind (that is, the complainant's non-consent to the application of force)" as well as having "the persuasive burden in relation to the accused's mental state" that is, that he actually knew she did not consent yet assaulted her anyway. Meanwhile, the defence need only "adduce sufficient evidence to raise a reasonable doubt."[29]

Several cases examined for this report involved the Crown arguing that the assault was "on the low end of the scale"[30] or asking for lenient sentences.[31]

The accused may also have the choice of court (Provincial Court, County Court, or Supreme Court) before whom he will be tried. In a study of Halifax cases of sexual assault, the authors found that the accused chose jury trials in those cases where jurors might be swayed into thinking the victim was herself to blame, even when the Crown had a strong case against him.[32]

The accused can choose to launch an appeal of either the conviction or the sentence. He may plead not guilty and then, after hearing the evidence at a preliminary hearing, change his plea to guilty. He may provide the names of some of the people to be contacted by a probation officer in making up the pre-sentencing report. His lawyer may work out a plea-bargained charge or sentence with the Crown about which the victim may not be consulted.[33]

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[29] Bryant (1989) p. 96.

[30] See R. v. MER (1989). Crown prosecutors in cases of wife assault are known to use phrases which tend to diminish the seriousness of the crime, referring to an assault as "a romantic entanglement" or "an affair of the heart": Tearmann Society for Battered Women (1988) pp. 84-85.

[31] In R. v. Works (1991) the Crown originally asked for a maximum of 90 days intermittent; In R. v. LD both the Crown and the defence lawyer argued for a sentence of under two years. Whether or not such courtroom scenarios are the result of plea bargaining is beyond the scope of this study.

[32] Yurchesyn and Renner (1989) pp. 4-5.

[33] "The victim was not consulted during the plea bargaining process for just over 70 percent of the guilty plea arrangements that involved a concession for the offender": Gunn and Minch (1988) pp. 88-89. "Being 'kept in the dark' about proceedings is one of the most frequent complaints.... [V]ictims feel cheated when they learn...[of] plea bargains which minimize their violation": Gaudett and Pasquali (1990) pp. 10-11.

Finally, after the victim has reported the crime, the police charge the accused, the Crown proceeded with the case, and if a verdict of guilty has been reached, the judge sentences the sexual assault offender.

SENTENCING PATTERNS

The maximum sentences for the three levels of sexual assault are: 10 years (first level), 14 years (with a weapon or causing bodily harm), and life (aggravated).[34] Yet even among the most horrific cases in this study, the harshest sentences imposed by Nova Scotia judges are generally well below the maximums outlined by Parliament.

For example, in a case involving a severe beating followed by a sexual assault, the judge said that both charges--s. 245.1 (b) (assault causing bodily harm)[35] and s. 246.1 (1)(a) (sexual assault)[36]--were "extremely serious offences" and that both carry "a maximum sentence of ten years' imprisonment".[37] He then quoted Mr. Justice MacDonald urging "substantial terms of imprisonment" and the court's "obligation to the public to impose sanctions upon sexual offenders that will clearly indicate society's repudiation and indeed abhorrence of their conduct." Yet the appeal judge stated that the conduct of the appellant warranted a sentence of three years' imprisonment. Mitigating factors reduced the final sentence to two years less a day, so as to be served in a provincial rather than federal institution.

In one rather exceptional case involving a woman who was sexually assaulted while working as a chambermaid, the offender was charged under s. 272 (sexual assault with a weapon) and s. 273 (aggravated sexual assault). The sentences imposed were five years for the first offence and 14 years (concurrent) for the second, for a total of 14 years. The offender appealed, one of the grounds being he should have only been charged with s. 273, that being the more serious offence, and the appeal court agreed. The counsel for the appellant also, as the judge said, "reviewed a number of cases for aggravated sexual assault which have been considered by this court, on appeal. From his analysis he urged that the range of sentences that have been imposed run from six to eight years."[38] As reported in the Chronicle-Herald, the appellant then argued "that the sentence was excessive and far beyond **the normal range of six to eight years** imposed in what [he] described as worst cases"

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[34] Criminal Code ss. 272, 272, and 273.

[35] Now s. 267(1)(b).

[36] Now s. 271.

[37] R. v. Brun (1987).

[38] R. v. Challis (1990).

[emphasis added].[39] In declining to reduce the sentence, the judge cited three cases where the sentences were 14 years, 14 years, and 20 years.[40]

Where Parliament has approved sentences of up to 10 years for the first level of sexual assault, case law seems to point to custodial sentences of from 90 days to three years. In "worst cases," that is, aggravated assault, where Parliament has approved sentences of up to life imprisonment, case law provides averages of six to eight years.

The vast majority of sexual assault offences in this sample of 190 are at the "lower" level (Criminal Code, s. 246.1 [now s. 271] or s. 271). This proportion is similar to that found by Statistics Canada, where 90 percent of the sexual assaults in a 1986 study were not sexual assault with a weapon or causing bodily harm.[41] The lowest sentences for these sexual assaults varied from a $50 fine or suspended sentence, to 30 days, with one year probation being fairly common. Ruebsaat's study of the new sexual assault laws found low-end sentences for section 246.1 [now s. 271] offences ranging from a suspended sentence to three months.[42] A 1987 Department of Justice study looking only at sentences involving incarceration found the lowest median sentences for sexual assault in the range of one to three months.[43] In examining all the sexual assault cases appearing before the Halifax law courts (including County and Supreme Courts) between 1983 and 1988, Yurchesyn and Renner found that 75 percent of the sentences were for under two years.[44] In a small New Brunswick study, sentences ranged from a two year suspended sentence plus probation, to four years.[45] Similarly, a Prince Edward Island study found sentences ranging from one year's probation to five years among reported cases from 1986 to 1988.[46]

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[39] As reported in the Chronicle-Herald, January 17, 1990.

[40] R. v. Challis. [The cases cited were R. v. Phillips (1983), 20 years; R. v. Jesso (1983), 14 years; and R. v. Connors (1983), 14 years.]

[41] Johnson (1988) p. 27.

[42] Ruebsaat (1985) p. 94.

[43] Department of Justice Canada (1987) p. 10.

[44] Yurchesyn and Renner (1989) p. 14.

[45] New Brunswick Advisory Council on the Status of Women (1985) pp. 3-4.

[46] Brehaut and Freeman (1989) p. 21.

Sentences for more violent assaults (s. 272, sexual assault with a weapon, threats to a third party or causing bodily harm) ranged from 10 months to a high of 12 years. Sentences around three years were fairly common. Ruebsaat found high-end sentences ranging from 8 to 12 years.[47] Looking at the 90th percentile sentences (that is, those in the highest ten percent), the Department of Justice found sentences up to three years for simple sexual assault and four years for combined simple (s. 271) and more serious sexual assaults (s. 272 and s. 273).[48] The Standing Committee on Justice notes that

> [t]he Committee was provided with evidence with respect to sentences [for] sexual assault ...which gave the Committee the impression that some judges at times do not seem to rank these offences as seriously as the Committee would have expected.[49]

The sentencing patterns that can be discerned in this review can lead to two, not necessarily incompatible, conclusions. First, sentences for sexual assault are low compared to the maximum outlined in the Criminal Code, with average sentences studied here (with the exception of newspaper reports) remaining not only well below the maximum of 10 years for simple sexual assault, but under two years. Various studies have concluded that our justice system treats sexual assault less seriously than common physical assault,[50] robbery,[51] and deer-jacking[52].

Second, the sentences handed out for sexual assault are not consistent, and many vary greatly from judge to judge, and from trial to appeal. Even the most violent crime could be mitigated by the offender's age or other factors, resulting in a light sentence. Sometimes judges declined to list specific reasons for the sentence, simply identifying the need for "general deterrence" when increasing the sentence, or, conversely, focusing on the importance of "rehabilitation" when decreasing the sentence.[53]

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[47] Ruebsaat (1985) p. 96.

[48] Department of Justice Canada (1987) p. 11.

[49] Standing Committee on Justice and the Solicitor General (1988) p. 60.

[50] Sahjpaul and Renner (1988) p. 503.

[51] Yurchesyn and Renner (1989) p. 6.

[52] Desjardins (1989).

The Department of Justice found that "substantial differences existed between the jurisdictions [they studied] in median custodial terms" for sexual assault, among a few other violent crimes.[54] In a 1990 study from the same department, it was reported that

> volumes have been filled with case law on sentencing, but by and large the principles that have been established are general in nature and have neither served as a structure for, nor limit upon, the vast discretion bestowed on the sentencing judge.[55]

In an analysis of Canadian judicial consistency, the author noted that "there is no uniform agreement about what factors ought to influence sentencing decisions."[56]

As this report shows, such inconsistency is not unknown in the sentencing of sexual assault offenders in Nova Scotia. Such inconsistency means Nova Scotia women are left with the chilling thought that the sentences that will be imposed for sexual assault are as unpredictable as are their chances of being a victim of the crime itself.

The following data provides a summary of the charges and sentences of sexual assault cases examined for this report:

Source: Halifax Police Department
Time frame: 1989-90
Number of offenders sentenced: 11
Limitation: Includes only the data from one police department, not all of Metro Halifax-Dartmouth

Date	Criminal Code Charge	Sentence
89/03/07	s. 272 (a)	30 months
89/03/30	s. 271 (1)(b)	12 months
89/06/22	s. 271 (1)(a)	3 years probation

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[53] See for example R. v. Downey (J.A.) (1988); R. v. Chisholm (1987); and R. v. Randall (1986) regarding general deterrence. See R. v. MC (1987) regarding rehabilitation.

[54] Department of Justice Canada (1987) p. 4.

[55] Department of Justice Canada (1990) p. 5.

[56] Brantingham (1985) p. 295.

89/06/29	s. 271 (1)(a)	15 months probation
89/08/18	s. 271 (1)(a)	30 months
89/09/12	s. 272 (c)	15 months + 3 years probation
89/12/08	s. 151	2 year suspended sentence
89/10/30	s. 271 (1)(a)	30 days + 2 years probation
90/08/10	s. 271 (1)(a)	30 days + 2 years probation
90/05/30	reduced to s. 266 (b)	$200 + costs

s. 271 (1)(a) (Sexual assault)
Sentence range: 30 days plus two years probation, to 30 months
Average sentence: 6 months[57]

s. 272 (Sexual assault with a weapon, threats to a third party or causing bodily harm)
Sentence range: 15 to 30 months

Source: Department of Attorney General
Time frame: 1988
Number of offenders sentenced: 12
Limitation: Only those provincial courts automated on JOIS system are included

Date	Criminal Code Charge	Sentence
87/07/22	s. 246.1 (1)(a)	2 years probation
87/08/06	s. 246.1 (1)(a)	1 year probation
87/08/06	s. 246.1 (1)(a)	1 year probation
87/10/01	s. 246.1 (1)(a)	36 months
87/11/17	s. 246.1 (1)(a)	4 months
87/10/29	s. 246.1 (1)(a)	90 days intermittent + 2 years probation
88/03/02	s. 246.1 (1)(a)	30 days
88/04/15	s. 246.1 (1)(a)	4 months
88/04/15	s. 246.1 (1)(a)	8 months + 2 years probation
88/05/18	s. 246.1 (1)(a)	6 months + 2 years probation
88/06/08	s. 246.1 (1)(b)	2 years probation
87/03/06	s. 246.1 (1)(a)	8 months + 2 years probation

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[57] Finding the average sentence can seem impossible where sentences can includes suspended sentences, probation, fines, federal incarceration, and even community service orders. This was the case particularly in provincial courts, where sexual assault could result in anything from a small fine to six years in a federal penitentiary.

s. 246.1 (1)(a) [now s. 271 (1)(a)] (Sexual assault -- indictable)
Sentence range: 1 year probation, to 36 months (three years)
Average sentence: 6 months

Source: Department of Attorney General
Time frame: 1989
Number of offenders sentenced: 38
Limitation: Only those provincial courts automated on JOIS system are included

s. 246.1 (1)(a) [now s. 271 (1)(a)] and s. 271 (1)(a) (Sexual assault -- indictable)
Offences under this charge: 6 + 14 = 20
Sentence range: 1 year probation, to four years
Average sentence: 14 months

s. 246.1 (1)(b) [now s. 271 (1)(b)] and s. 271 (1)(b) (Sexual assault - summary)
Offences under this charge: 3 + 12 = 15
Sentence range: 6 months probation, to 6 months plus two years probation
Average sentence (time): 1 month; (fine): $463

s. 272 (Sexual assault with a weapon, threats to a third party or causing bodily harm)
Offences under this charge: 3
s. 272 (a) (with a weapon): 3 years
s. 272 (a) (with a weapon): 4 years
s. 272 (c) (causing bodily harm): 6 years

Source: Department of Attorney General
Time frame: 1990
Number of offences sentenced: 65
Limitation: Only those provincial courts automated on JOIS system are included

s. 271 (1)(a) (Sexual assault -- indictable)
Offences under this charge: 37
Sentence range: $50 or 6 months probation, to 3 years
Average sentence: 5 months

s. 271 (1)(b) (Sexual assault - summary)
Offences under this charge: 26
Sentence range: 1 year probation, to 6 months plus 2 years probation
Average sentence: 2½ months

s. 272 (Sexual assault with a weapon, threats to a third party or causing bodily harm)

Offences under this charge: 2
s. 272 (a) (with a weapon): 17 months + 2 years probation
s. 272 (a) (with a weapon): 10 months + 2 years probation

Source: Nova Scotia Reports and Nova Scotia Law News
Time frame: 1983 to 1991
Number of offenders sentenced: 27
Limitation: Only 10 to 15 percent of all cases are reported in NSR. Those below represent only those identified as being charged under s. 246.1 (1) [now s. 271 (1)] or s. 271 (1) (Sexual assault).

Sentence range: Suspended sentence plus 2 years probation, to 7 years
Average sentence: 22 months

Sources: Chronicle-Herald and Daily News
Time frame: January 1990 to April 1991
Number of offenders sentenced: 13
Limitation: Newspapers tend to report the more violent crimes, possibly skewing the sentences upward. The data below represents only those identified as being charged with "sexual assault" or "sexual assault with a weapon."

Sentence range: 90 days intermittent, to 12 years
Average sentence: 32 months

Victims: Youth, Age and Disability

The combination of very young victims assaulted by those in positions of trust or parental authority is one that many Nova Scotia judges find most problematic.

A case reported in a newspaper involved a charge of sexual interference with a two-and-a-half-year-old girl. The judge was quoted as saying "the kind of thing that [he] did is almost unspeakable." According to the newspaper report, the judge,

> calling the incident a serious act of perversion, ...said "courts have an overriding obligation to protect those least able to protect themselves."[58]

In increasing a sentence, the judge in another case noted the victims were each nine years of age and said that

> [s]exual abuse of near helpless children by adults, upon whom they should be able to rely for protection, should incur sentences which hopefully deter the perpetrator and others so inclined and demonstrate society's revulsion of such conduct.[59]

In yet another case, the judge said to the offender,

> [a]s her father, she had every right to expect that you, above all, would protect her from the very things you were doing to her yourself.[60]

While the relevant sections under the Criminal Code indicate that consent is not a defence where the sexual assault involves a child under the age of 14, an examination of the data indicates that, in many cases, whether or not victim "consents" to the sexual act is an issue in sentencing, as the following cases demonstrate.

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[58] Marchand (1990) as reported in the Daily News, January 25, 1991.

[59] R. v. Hawkes (1987).

[60] R. v. LD. (1990).

In one case, a 36-year-old man was found guilty of two charges of sexual assault of a young woman under 14, but the judge, according to a newspaper report, said that

> the case troubled him because the girl obviously agreed to the acts.[61]

In another newspaper account of a case, the judge was reported as saying that a 13-year-old runaway girl was "coaxed" into a bedroom by the offender but that she consented to have sex. The judge noted that the sexual assault did not involve force and that

> it was a matter of days before the complainant was of an age where consent would not have been an issue.[62]

While consent of children has not been used as a defence _per se_, it certainly seems to be a mitigating factor in sentencing in these cases. It appears that while the law has chosen 14 years as the cut-off age for consent, some Nova Scotia courts are not overly outraged when 11-, 12-, and 13-year-old girls are sexually assaulted. The "abhorrence", "repugnance" and "revulsion" of sex with children that judges express on behalf of society is often reserved for offenders who sexually assault very young children or women past an age where they are generally considered sexually desirable.

The appeal judge in one sexual assault case found the victim's age to be an aggravating factor: she was 86. The assault accompanied a break and enter, and the sentence was increased from three to six years.[63]

A victim with a disability is also sometimes seen as more vulnerable as well as more innocent than other victims. In a recent case reported in the _Chronicle-Herald_, the judge noted "The victim, who was handicapped, was particularly vulnerable in this case."[64]

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[61] Theoharpolous as reported in the _Daily News_, February 10, 1990.

[62] Downey (W.B.) as reported in the _Chronicle-Herald_, August 22, 1990.

[63] _R_. v. _Blackburn_ (1986).

[64] "Man jailed for sex assault", _Chronicle-Herald_, January 5, 1990.

Extreme youth or age or disability not only makes the victim more "vulnerable," sometimes it makes them less credible. In a appeal trial that saw the conviction set aside, a judge doubted the credibility of the six-year-old girl. "[T]he child's evidence was unsatisfactory and contradictory," he concluded, as the girl had alleged sexual intercourse (among other sexual activity) while a medical examination showed her to be a virgin.[65]

In a recent case reported in the newspapers the victim's advanced age (84) and alcohol use made her credibility suspect. A psychologist called by the defence, who never examined the woman but had access to her medical files, conjectured that the victim could suffer from a rare brain disorder affecting memory. This left the judge to conclude it would be "dangerous to convict on the evidence before me."[66]

Victims: Innocence

Among the recommendations made by the Standing Committee on Justice were that the "vulnerability of the victim" be an aggravating factor, and "provocation by the victim" be a mitigating factor.[67] Like the "sexual abuse of near helpless children by adults,"[68] some Nova Scotia judges see sexual assaults by strangers as being completely the fault of the offender. Assaulting a "totally innocent" woman appears to be an aggravating factor.

One judge delineates the factors to be considered in sentencing:

> A fit sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender for that offence.[69]

Inviting a man up to drink rum, while not expressly called mitigating, did "distinguish" one case from others,[70] and resulted in a reduction in the sentence.

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[65] R. v. EWC (1989).

[66] Falle as reported in the Chronicle Herald, July 31, 1990.

[67] Standing Committee on Justice and the Solicitor General (1988) pp. 66-67.

[68] R. v. Hawkes (1987).

[69] R. v. Works (1991).

[70] R. v. Sparks (1986).

What circumstances or characteristics do Nova Scotia judges attribute to a "totally innocent" woman? An innocent woman may be working, as in one case where the woman working as a chambermaid is described by the judge as a "defenceless and **totally innocent** woman" [emphasis added][71], or she may be walking to work.[72] As well, women sleeping in their own homes and assaulted after a break and enter are not considered in any way responsible for "provoking" their attacker. A woman was sleeping when assaulted in one case where the appeal judge increased the sentence, saying, "Here the offence was serious and **entirely** the respondent's responsibility [emphasis added]."[73] One judge called the offender's conduct "a heinous double crime committed **without provocation or excuse**" [emphasis added]. The victim was 86 years old.[74]

However, being asleep did not lend an air of innocence to one victim assaulted by her roommate. An appeal judge found it pertinent to mention that the victim, even though employed, was not making a financial contribution to the upkeep of the apartment, "although she spent a good deal of her time attending local clubs."[75]

Youth is not always seen as indicative of innocence, as we have seen in cases where children 11, 12 or 13 years of age are perceived of as capable of consenting to sexual activity. At trial a defence lawyer suggested

> that the victim was sexually precocious and even though under 14 years of age and consent was not a factor she was somewhat responsible for the respondent's conduct. This suggestion was strongly denied by the Crown but **unfortunately** the trial judge did not consider evidence on this point necessary as no consent was possible for the offence charged [emphasis added].[76]

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[71] R. v. Challis (1990). The offender's appeal against a 14 year sentence was dismissed.

[72] R. v. White (1989). The sentence was increased on appeal from four to seven years.

[73] R. v. Works (1990).

[74] R. v. Blackburn (1986).

[75] R. v. Madore (1985).

[76] R. v. McClement (1988).

Relationship to Victim: A Position of Trust and Authority

The sections of the Criminal Code that deal with common assault, sexual assault, and sexual assault under 14 note that consent cannot be obtained if the offender uses authority to secure it. Section 265 (3) details that

> no consent is obtained where the complainant submits or does not resist by reason of ... force; ...threats; fraud; or the exercise of authority.

Section 150.1 (2)(c) notes that the age exemption regarding consent is not available as a defence if the accused is

> in a position of trust or authority or with whom the complainant is in a relationship of dependency.

In the following cases of incest, the relationship between the perpetrator and victim was clearly considered an aggravating factor, but still does not generally result in a maximum length sentence.

In one case, the relationship between the offender and the victim was an aggravating factor to the extent that the victim's relative maturity (16 years of age), her consent and even encouragement of sexual intercourse was seen as unimportant. "She had known the appellant since she was three years of age and considered him to be her 'Dad' since that time," the judge said. After living in foster homes for several years, she wrote a "love letter" to the offender, after which "he drove her to his home where they had sexual intercourse." The judge in this case laid the blame on the adult, saying,

> [t]he appellant took advantage of and abused that trust at a time in [the victim's] life when she was particularly vulnerable, rather than assuring that she received proper counsel and guidance in her immature confusion.[77]

In another case, the offender was convicted of three charges under s. 150 with his daughters and one of s. 246.1 (1)(a) with his step-daughter. In increasing the sentence, the appeal judge said, "It is impossible to express adequately our abhorrence in respect to crimes of this nature. The respondent was in a position of primary trust...."[78] The total sentence imposed on appeal was five years.

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[77] R. v. Langille (1989).

In a case involving an offender who was great-uncle to the victim, the judge said, "...[W]hile you weren't the parent of this child and were not in a position of primary trust or influence to that extent, you nonetheless were a relative." (The great-uncle's age, however, was a mitigating factor and the sentence was one year.)[79]

The 15-year-old daughter of the offender's common-law wife was assaulted in another case. In finding him guilty, the judge said,

> his continuing to apply pressure to her while demonstrating anger...in circumstances where she had virtually no means of escape and where no other alternatives were apparently open to her and her being fearful of the consequences of refusing, amounted to an exercise of the accused's parental authority, which resulted in the complainant submitting to the sexual act.[80]

While many Nova Scotia judges see the hierarchy inherent in a position of authority between parent (or parent-like adult) and a child, many do not seem to recognize a similarly uneven relationship can exist between men and women. Catharine McKinnon suggests what is necessary is a "critique of the notion that gender is basically a difference rather than a hierarchy."[81] Indeed, the scenario of fear and acquiesence described in the case above could describe the situation of a woman battered/assaulted by her husband, where the economic power of her husband and her concern for her children's welfare result in her submission to violence.

Relationship to Victim: Friendship

Breach of trust is recognized by some judges where the relationship is one of friendship between adults. The sections in the Criminal Code dealing with trust and authority seem to indicate that the law recognizes that assaults perpetrated by those who use their more powerful position and/or their relationship of trust to force nonconsensual sex can be worse than assaults done by strangers. This is not always the case in Nova Scotia courts.

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[78] R. v. RGR (1989).

[79] R. v. DEL (1988).

[80] R. v. CES (1988).

[81] McKinnon (1987) p. 3.

One case that demonstrates the ambivalence in our justice system about the stranger versus trusted offender is the following, involving an offender who entered his sleeping "friend's" bedroom and assaulted her. In the original trial, the judge said the offence could be placed in "a less serious light than if they had been total strangers." The appeal judge, on the other hand, increased the sentence and said that

> [i]t was because [the victim] imposed trust in the respondent that he was provided with the opportunity for the crime, and in that, it is an aggravating factor.[82]

In a recent case reported in the newspaper, the judge, in finding the accused not guilty, is quoted as saying

> [i]f the two were strangers, it might be considered a sexual assault, but the two were old friends--when the activity was considered undesirable by one of the parties it was stopped.[83]

In a case where a woman was badly beaten and then sexually assaulted, both the trial judge and the appeal judge saw the "friendship" between the two parties as a mitigating factor. "The trial judge considered this was an isolated incident in an ongoing relationship" and sentenced the offender to a total of nine months for the two assaults. The appeal judge was unable to agree with the sentence. "The conduct of the appellant, when considered in isolation, warrants a sentence in the range of three years' imprisonment." However, the judge then goes on to list mitigating factors such as the fact that it was the appellant's first offence

> and the offence was out of character considering the one and a half years of ongoing relationship between the appellant and the victim. These are mitigating circumstances to be considered....[84]

He then sentenced the offender to two years less a day.

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[82] As quoted in R. v. Works (1991).

[83] Sheppard, as quoted in the Chronicle-Herald, April 13, 1990.

[84] R. v. Brun (1987).

While knowing someone for a year and a half can mitigate a sentence, so can knowing someone for about an hour and a half. In one case, the judge made the following comment when reducing a seven-year sentence to four years:

> It is clear from the statement of facts that the appellant struck the victim in the face and choked her. The photograph in the exhibit displays the facial swelling. The appellant used force to obtain his will. Such conduct cannot be tolerated. Although we question the wisdom of the victim in inviting the appellant, whom she had met approximately only an hour before, to her room to drink rum at about four a.m., such an invitation did not give the appellant license to partake of sexual intercourse without consent. However, that course of conduct on the part of the victim does distinguish this case from some others.[85]

Relationship to Victim: None

Many Nova Scotia judges see stranger-rape as the most inexcusable, as the following sentencing remarks demonstrate:

> The present case involves attacks on women in public streets. That type of conduct must be deterred by severe sentences.[86]

> ...breaking into an occupied dwelling house at night and raping an innocent woman. We cannot too strongly express society's abhorrence of these crimes.[87]

While being assaulted by a stranger is indeed terrorizing, there is no evidence to suggest being assaulted by a friend or trusted person is less so. One study found that among survivors of sexual assault, "No cases in the severely traumatized group were situations where the sexual offender was unknown or disconnected to the victim."[88] Trauma was greatest among those who were assaulted by someone they couldn't easily identify as a "sexual offender," such as a respected member of the community, and in cases where the victim was made to feel somehow responsible for the assault.[89]

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[85] R. v. Sparks (1986).

[86] R. v. White (1989).

[87] R. v. Blackburn (1986).

[88] Hindman (1989) p. 88.

Victims assaulted by strangers, in public, can perhaps regain some sense of personal safety by avoiding strangers or by not going out alone at night. Victims assaulted by trusted friends may not feel safe in their own home, with other friends, and may begin to doubt their judgement about people, as if they somehow could have predicted and prevented the assault.

Sympathy for the Offender

Some judges note both that sex offenders, especially those assaulting young children, should get treatment, and that such treatment is not always available. Others feel that the offender has already suffered enough for his crime by the time he goes to trial, and will take this into account when bringing down a sentence. A few judges extend concern for the offender to the point of expressing what appears to be sympathy for the offender, almost as if he were the victim.

In dismissing the Crown appeal on disposition of a suspended sentence, one judge said to the offender,

> ...you have suffered a great deal of emotional pain as a result of these incidents and for that reason I am satisfied that this kind of thing will never happen in your life again.[90]

The offender had sexually assaulted his granddaughter for five years beginning when she was five.

In a case reported in the Daily News, a judge says that the offender had "already suffered enough to be deterred from doing it again" but nevertheless sentenced him "harshly" to nine months with periodic leaves to attend to his business matters.[91]

In one case, although the sentence was increased, the appeal judge included this comment in his remarks:

> I accept the submission of the respondent's counsel that the finding of guilt here must be devastating to the respondent, at work, among

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[89] Hindman (1989) pp. 81-82.

[90] R. v. MER (1989).

[91] McGraw. "Businessman jailed for molesting teen", Daily News, July 17, 1990.

> his friends, in church, and, particularly, in his relationship with his wife and family.[92]

Some offenders seem to get sympathy for the fact their family has broken up when the offenders themselves broke them. Factors listed in sentencing a man who had assaulted his daughter at ages 11 and 13 included the fact that "he has continued to provide support [ie, maintenance payments] for the children he has lost as a result of the offences...."[93] Another offender who assaulted his daughter, aged nine, had as a mitigating factor " ... the loss of the appellant's family; and ... the adverse publicity surrounding this matter."[94]

Interesting choices of words appear in some cases: a gang rape is called a "sad" offence;[95] and an offender's "prior record for similar offences" leads the judge to comment, as quoted in the Chronicle-Herald, that the offender's "unfortunate attraction to children hasn't abated."[96] In another case reported in the newspaper, an offender who sexually assaulted his former girlfriend got this comment from the judge: "[He] continues to be misguided about relationships with women."[97]

If the offender is seen as suffering, who is seen as causing this unfortunate state? Mothers and wives are still invoked as being somehow responsible for the actions of sons and husbands. A defence lawyer in a case of sexual assault with a weapon (reported in the Chronicle-Herald) was quoted as saying his client

> had a problem dealing with women because of a deep-rooted psychiatric disorder that stems from his mother's rejection of him and from long-term conflicts with her since he was a child.[98]

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[92] R. v. Bryson (1987).

[93] R. v. BEE (1988).

[94] R. v. MC. (1989).

[95] Clayton, (F.), as reported in the Chronicle-Herald, October 31, 1990.

[96] Clift, as reported in the Chronicle-Herald, April 26, 1990.

[97] Clayton, as reported in the Chronicle-Herald, March 30, 1990.

[98] Bonnet, as reported in the Chronicle-Herald, September 15, 1990.

In handing down a sentence, an appeal judge quoted a defence expert, who described the offender as a "deprived illiterate man" who blamed his assault on his 10-year-old daughter on

> his heavy drinking which has occurred apparently during the last couple of years since he learned that his wife was seeing other men. It appeared he had taken this information particularly hard because it echoes his experience with his first wife.[99]

Other judges reject the arguments of defence counsel or "expert" witnesses in their suggestion of sympathy for the perpetrator. In one case the offender was described somewhat sympathetically by the defence expert, but the judge remarked that

> although one may feel some sympathy for [the offender] because of his psychological problems, the stark fact emerges from his record is that he is a danger to the public, particularly to women.[100]

Christine Boyle has linked "the ambivalent legal protection afforded rape victims to the fact that male lawmakers simultaneously view themselves as aggrieved 'owners' and as potential accused persons."[101] That is, judges may be thinking of their own daughters being potential victims of sexual assault as they innocently lie sleeping or when walking to work, and/or judges may identify or sympathize with the offender, a man who may seem not unlike themselves, who has been publicly convicted and must now face sentencing.

Sympathy for sex offenders can be found also among those who are involved in providing treatment. In a study of "rapists undergoing psychotherapy," the authors discuss the wives of the offenders:

> They enjoyed visits to the hospital and felt that their husbands had improved. The investigators suspected that they were using the situation to enhance their positions of moral and social dominance over their unfortunate menfolk.[102]

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[99] R. v. WJF (1986).

[100] R. v. White (1989).

[101] Boyd and Sheehy (1986) p. 19.

[102] West, Roy, and Nichols (1978) p. 128.

Since they are supposed to be treating "ill" or "deviant" people, many involved in studying or treating sex offenders are surprised at how "normal" these people are. One therapist says

> The offenders are often bright, attractive, they take care of themselves, they have lots of social skills, and they can appear very competent or they can appear pathetic and hurt. My first reaction on meeting a new offender is always, "There must be some mistake--he couldn't have done what his record says he did."[103]

One treatment expert states that

> the most **striking** characteristic of sex offenders, from a diagnostic standpoint, is their apparent normality. Most do not qualify for any psychiatric diagnosis [emphasis added].[104]

Regarding results on intelligence test scores, one study of dangerous sexual offenders noted,

> **Interestingly**, 23 percent scored in the bright-normal to superior range [emphasis added].[105]

Offenders: Responsibility

In Martin's analysis of the Criminal Code, he notes that

> [o]ur Criminal Code does not recognize the defence of diminished responsibility and even though the accused may have been ill at the time of the offence he is technically sane if he was able to distinguish between right and wrong....[I]gnorance, whether of the existence of the law or of its meaning, scope or application, is no defence.[106]

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[103] Herman (1988) p. 703.

[104] Herman (1988) pp. 702-703.

[105] Solicitor General (1986) p. 11.

[106] Martin (1991) pp. CC-38, CC-43.

While diminished responsibility and ignorance, like the consent of a child, are not recognized as a defence, they do seem to act as mitigating factors in the sentencing of sexual assault offenders. Sometimes judges focus not so much on the innocence of the victim but on the fact the offender "should have known better."

In increasing a sentence, an appeal judge said:

> These assaults assume great flagrancy because they were committed...after the respondent had been reprimanded by the Family and Children's Services and after he had been attending the Mental Health Clinic. He must have been fully warned about the criminality of such conduct and its danger and consequences.[107]

But perhaps not completely responsible is the offender sentenced to a suspended sentence plus two years probation. The trial judge said:

> I don't think that if your thinking processes had not been blurred by alcohol that you would have violated your granddaughter's trust to the extent that you did.[108]

The appeal judge quoted this remark in dismissing the Crown's appeal on the sentence.

Characteristics of Offender: Age

The age of the offender is often considered a mitigating factor. In cases examined for this study, age was mitigating in cases where the offender was 15, 20, 39, 52, and 71, and when the "mental age" was considered low.

One case involved a 15-year-old who had attempted sexual intercourse with the two young granddaughters of his foster parents. He offered them candy for the acts, and threatened reprisals if they informed on him. The assaults occurred about twice a week for two months. The trial judge said the offender "thought there was nothing wrong with this type of activity as no one had ever explained these details to him."[109] In reducing the sentence, the appeal judge said that

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[107] R. v. WDP (1987).

[108] R. v. MER (1989).

[109] R. v. CJM (1986).

> without trying to minimize the seriousness of the present offences, it is my view that when considering first-time offenders one must heavily emphasize the element of rehabilitation.[110]

In a case involving an hour and a half long struggle between a 60-year-old woman and her 20-year-old assailant, the appeal judge reduced the sentence to seven years. He said,

> [i]n coming to that conclusion, I have not overlooked the seriousness of the offences.... However, it seems to me that to impose a total sentence of 10 years for this **youthful first offender** may defeat the very purpose of a custodial sentence [emphasis added].[111]

Chronological age is not necessarily directly related to "youthfulness", as the following two cases demonstrate. Although one accused was 28 years old, he was illiterate and labelled mentally retarded. "Here," the judge said in dismissing the Crown's appeal,

> we really have a situation similar to an offence committed by a youthful first offender. The mental age of the respondent would be much less than his actual years.[112]

In another case the offender was 24, but the judge reported that "his mental age is that of a 12- to 14-year old." The Crown appeal on the sentence was dismissed.[113]

One judge said that

> Considering the appellant's age [39] and his limited scope for employment, the effect of an extended period of incarceration would be to make rehabilitation very difficult.

The sentence was reduced from five to three years.[114] Another reduced a sentence on appeal and stated

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[110] R. v. CJM (1986) p. 3

[111] R. v. Williams (1983).

[112] R. v. Madore (1985).

[113] R. v. Joudrey (1985).

[114] R. v. Kelly (R.C.) (1985).

> We have reached this conclusion because of several factors, including the age [52] and the mental retardation of the appellant....[115]

While trust was an aggravating factor in another case, the judge did take the offender's age (71) and ill health into consideration when imposing a one year sentence.[116]

In a report prepared by Canada's G. Allan Roeher Institute, the author notes that the "slight over-representation of the offender who has been labelled mentally retarded" may be explained by such offenders' lack of skill in avoiding getting caught.[117] Regarding more lenient treatment for such offenders, the report states: "It helps no one to have one set of rules for the population not shown to have intellectual impairments and another for those who happen to have a developmental disability."[118] Another possible explanation for the over-representation of offenders labelled mentally retarded is the convenience of the term for defence lawyers to encourage a lighter sentence.

The Roeher report also notes that "most sex offenders begin their illegal activities while they are adolescents."[119] In another study of dangerous sex offenders, over half of the men were under age 35 at the time of the assault: 31 percent were 25 to 34; 15 percent were 21 to 24; and 10 percent were under 20 years of age when they were first convicted for sexually assault.[120]

A Nova Scotia study of violence against young women showed that 9 per cent of the 216 females in grades 9 to 12 had been victims of forced sex. Of the 175 young men who participated in the study, two per cent reported they had forced sex on someone.[121] In a study of young women published by the Nova Scotia Advisory Council on the Status of Women, 19 percent of the young women who had sex with a male had been forced to have sex by their boyfriends.[122]

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[115] R. v. Kelly (L.) (1985).

[116] R. v. DEL (1988).

[117] Senn (n.d. 1988?) p. 55.

[118] Senn (n.d. 1988?) p. 56.

[119] Senn (n.d. 1988?) p. 61.

[120] Solicitor General of Canada (1986) p. 43.

[121] Fitzpatrick (n.d. 1990?) pp. 6-7.

[122] Day (1990) p. 31.

We also know that a large percentage of sexual assault victims (68 percent in one study[123]) are young women 16 to 25 years of age, and that many assailants (estimates range from 40 to 69 percent[124]) are known to the victim. Thus, unless young women associate exclusively with old men, many of their attacks come at the hands of "youthful offenders".

Characteristics of Offender: Criminal Record

Even with cases of extreme violence, the fact that an assault is a first offence can be a mitigating factor. Two cases already cited have as mitigating factors the fact that both were first-time offenders.[125] In another case, the offender "had never been in trouble with the law before."[126] In another, the judge referred to the severe beating followed by a sexual assault as "extremely serious offences" but the offender was "31 years old, with no serious prior criminal record."[127] One accused had denied the allegations of his daughter who was 12 at the trial, 9 years old at the time of the offence. In reducing the sentence, the judge listed as a mitigating factor "the absence of a criminal record."[128]

However, one judge has the following comments to make in another father-daughter case:

> ...I recognize that there is no previous record, but I have to say in relation to previous record, sadly it is very often in cases of sexual assault, particularly where they have occurred over a longer period such as these have occurred...there is no criminal record because nobody reported them.[129]

Similarly, in a case involving two girls, one 11 and one 12 at the time of the assaults, the judge is reported to have said the offender's "deliberate scheme" in this case "makes the court wonder how many others have been taken in that we are unaware of."[130]

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[123] Solicitor General of Canada (1985) p. 3.

[124] Solicitor General of Canada (1985) p. 3; Renner and Keith (1989) p. 3.

[125] R. v. Kelly (R.C.)(1985); and R. v. Brown (1985).

[126] R. v. Madore (1985).

[127] R. v. Brun (1987).

[128] R. v. MC (1987).

[129] R. v. LD (1990).

If offences are seen as "totally out of character" and so not likely to be repeated, the need for specific deterrence, and therefore the sentence, will not be as great. However, in studies looking at father-daughter rape and other incest cases, offenders have been found to be responsible for multiple assaults. One treatment expert estimates that "one-third to one-half of incestuous fathers repeat their offences with more than one child."[131] Another study found "the typical incest offender has between nine and 14 victims, rather than 1.5" as the offenders originally reported.[132] While recidivism rates look at sexual offences that occur after conviction, they can give us a clue about the number of assaults that may have occurred before conviction. Recidivism rates range from 25 percent[133] to 40 percent[134] for untreated offenders. (With treated offenders the rate is from 10 to 18 percent.[135])

Characteristics of Offenders: Employment

Some Nova Scotia judges hesitate to sentence sex offenders to non-intermittent lengthy sentences as it would interfere with their roles as breadwinner. Some see employment as a steadying influence, making re-offending less likely.

In a recent case reported in the Daily News, the judge is reported as saying that

> he did not think [the offender] would commit the offence again, adding that the accused was a hard worker, had a wife and four children to support and had a good job.[136]

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[130] Harrington, as reported in the Chronicle-Herald, March 10, 1990, and the Daily News, April 13, 1990.

[131] Herman (1988) p. 707.

[132] Hindman (1989) p. 47.

[133] Solicitor General of Canada (1990) p. 18.

[134] Robinson (1989) p. 13.

[135] Robinson (1989) pp. 18 and 21.

[136] Theoharpolus, as reported in the Daily News, February 10, 1990.

In another case reported in the newspaper, an offender was sentenced to nine months but with "periodic leaves of absence from the Halifax Correctional Centre to tend to business matters."[137] While the sentence is increased in one appeal, the judge still notes that the offender has been supporting "the children he has lost as a result of the offences" as well as having a second wife.[138]

In dismissing the Crown appeal on a sentence, the judge said,

> [t]he respondent possessed a grade 12 education and was **steadily employed at the time he committed the offence.** The pre-sentence report was favourable and indicated that the respondent enjoyed a good reputation and that he was remorseful for his actions [emphasis added].[139]

Not having a job is a mitigating factor for both of the following offenders: "...[B]oth were employed full time and described as good workers...."[140] Both offenders had their sentences reduced, but in one of those cases, it was not because of the accused's "good" job or because he had independent business matters to deal with that his circumstances of employment were mitigating, but because of his "limited scope for employment," so that an extended period of incarceration wouldn't be conducive to rehabilitation.[141]

In a study of dangerous sexual offenders, 68 percent were employed at the time of the offence. The study did not determine how many of them "enjoyed a good reputation" despite their offending behaviour. Having steady employment, a family to support or a business to run may be considered mitigating, and having limited prospects can be seen by judges as mitigating; but, as these cases show, merely having a job or being unemployed did not stop the offenders from assaulting young women in the first place.

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[137] McGraw, as reported in the Daily News, July 17, 1990.

[138] R. v. BEE (1988).

[139] R. v. Fadelle (1985).

[140] R. v. Kelly (R.C.) (1985).

[141] R. v. Kelly (R.C.) (1985) and R. v. Brown (1985).

SEXUAL ASSAULT AND VIOLENCE

Many Nova Scotia judges, mirroring a confusion in our society, can't seem to agree on whether sexual assault is violent or sex itself is violent, whether sexual assault is caused by lust or illness or lack of morals, and whether sexual assault is even harmful to the victim.

When the sexual assault offences were changed in 1983, they were included in Part IV of the Criminal Code, which is entitled "Offences against the person and reputation," instead of in "Sexual offences, public morals and disorderly conduct."

> The inclusion of sexual assault in Part IV reflected the desire to treat sexual offences as crimes of violence and not morality.... [G]eneral rules of evidence applicable to other violent offences against the person would now apply in sexual assault cases.[142]

Some Nova Scotia judges see sexual assaults as acts of violence; others still regard them as personal expressions--albeit immoral, misguided, perverted or criminal--of sexuality. Some judges see both the physical and psychological harm that results from sexual assault, as the following remarks illustrate:

> One must recognize that by its very definition a sexual assault is a violent act, whether there is intercourse or not, it is an act of violence.[143]

> Although as the trial judge said, there was no bodily harm suffered by the complainant, **there was an assault** and she was **forced** to masturbate the respondent [emphasis added].[144]

Others believe that such assaults can occur with no violence and "no harm done":

> ...no suggestion that there was any violence or injury to the person, no bodily harm.[145]

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[142] Ruebsaat (1985) p. 1.

[143] R. v. LD (1990).

[144] R. v. Bryson (1987).

[145] R. v. Bryson (1987) p. 3.

> ...the acts complained of took place without violence and there was no vaginal penetration of the victims.[146]
>
> ...did not involve force.[147]
>
> ...no force was used by him.[148]
>
> ...there was no breach of trust or violence involved.[149]

Far from being an integral part of the very definition of sexual assault, violence or force seem to be independent variables, to be found in some cases but not others. In R. v. Joudrey, the judge lists "factors to be considered" in sexual assault cases, including "**whether** there is any violence used" [emphasis added].[150]

In a case involving a severe beating and a sexual assault, the judge seems to see the violence as confined to the common assault only. "The unwarranted assault causing bodily injury was obviously an aggravating factor in the subsequent sexual assault." Indeed, the charges laid were (common) assault causing bodily harm and s. 246.1 (1)--the lowest level of sexual assault.[151] [152]

Geraldine Finn postulates that violent sexuality has been "normalized," that our justice system implies that "there is something 'natural' and inevitable about male sexual aggression."[153] In a report prepared for the Canadian Judicial Centre, Donna Hackett notes that, in one study, "50 percent of the men indicated that they had clearly pursued sexual activity against a woman's will.... Sixty percent of men in another study indicated they would use force to sexually assault a woman if they could get away with it."[154]

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[146] R. v. Drysdale (1985).

[147] Downey, (W.B.), as reported in the Chronicle-Herald, August 22, 1990.

[148] R. v. Kelly (L.) (1985).

[149] R. v. Brown (1985).

[150] R. v. Joudrey (1985).

[151] R. v. Brun (1987).

[152] The use of a weapon, however, is clearly considered violence in sexual assault, resulting in sentences of 7, 10, and 14 years. See R v. White (1989); R. v. Graves (1988); and R. v. Challis (1990).

[153] Finn (1989/90) pp. 384, 386.

In a 1984 report written by the Law Reform Commission, the authors describe a case where a man was found guilty of sexual assault for "flagellation of a consenting female." They suggest "the accused should have been acquitted.... [I]t would have been possible for defence to plead...that consent was given for a **socially acceptable purpose**" [emphasis added].[155]

A writer in the Canadian Bar Review suggests that a sexual assault victim's fear or apprehension of force (causing her to submit) should be based on "reasonable grounds" and that the jury may need to be instructed that her fear could be "irrational" and thus not indicate non-consent.[156]

Several Crown prosecutors in a Winnipeg studied referred to sexual assaults without a lot of violence as either "poor salesmanship" or "over-zealous seductions."[157]

Bernard Dickens, in a paper presented to the Criminology Research Centre of Simon Fraser University, stated that

> It may be an oversimplification to regard aggressive sex offences as nothing more than "the hurts and failures of an inappropriate courtship"; however, this concept usefully retains focus both upon the **reasonable ambitions** of younger sex offenders and upon **the goal of appropriate courtship** [emphasis added].[158]

Sex is Violent

Some judges apparently believe that although the assaults involved force and violence, sex was still consensual and so not a crime. Some judges seem to give credence to the idea that it is sex itself that is naturally violent, making it difficult to distinguish from sexual assault. One judge stated:

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[154] Hackett (1990) p. 54.

[155] Law Reform Commission, 1984, p. 29 and p. 29 note.

[156] Bryant (1989) pp. 108, 116.

[157] Gunn and Minch (1988) p. 99.

[158] Criminology Research Centre (1981) p. 67.

> The application of physical force to another (and sexual intercourse is an act requiring force) is either an assault or not an assault depending on the presence or absence of consent.[159]

Others see sexual assault as "misdirected" lust:

> Perhaps this is an oversimplification but he seems to have had more than his share of sexual appetite and he didn't much care where he got his satisfaction. [The offender sexually assaulted his three daughters and a step-daughter.][160]
>
> It seems that he had tried to buy his wife's affection and when this has not worked out he has turned to his children for some of his needs.[161]
>
> [He has] a high level of sexual curiosity and desire. [The offender assaulted a 15-year-old at knifepoint.][162]

A judge quoted in the newspaper obviously sees lust as a motivation for sexual assault but is shocked at the gratuitous violence involved in one case before him. The fact that a beer bottle was used during a gang rape defined it as a "deliberate, violent, degrading act" that "went beyond sexual gratification".[163]

While the finding of lust is not expressly called mitigating, the absence of such "sexual urges" is called aggravating. An appeal judge doubled the sentence of an offender who assaulted an 86-year-old woman

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[159] R. v. Zwicker (1990).

[160] R. v. RGR (1989).

[161] R. V. WJF (1986).

[162] A defence expert in R. v. White (1989).

[163] Clayton, (F.), as reported in the Chronicle-Herald, October 31, 1990.

> without any claim that it was induced by **irrepressible** mental diseases or **sexual compulsion** [emphasis added].[164]

No Harm Done

In the Criminal Code, bodily harm "means any hurt or injury to the complainant that interferes with the health or comfort of the complainant and that is more than merely transient or trifling in nature."[165] Some judges also consider evidence (or lack thereof) regarding psychological or emotional harm:

> . . . no evidence of emotional or psychological harm to the victim. [The woman's "friend" severely beat and then sexually assaulted her.][166]

> . . . no serious consequences, at least in the short run, came of the incident [The victim was a three-and-a-half-year-old girl].[167]

The psychological health of women attacked while sleeping in their own beds is not always considered. In looking only at the physical effects of one such assault, a judge calls the harm "minor" and the force "minimal."[168]

The following assault, as described by the appeal judge, sounds almost like a gentle interlude. The victim in this case was a 17-year-old with "greatly diminished intelligence":

> The appellant stopped her and asked her to perform oral sex on him. She refused saying she had to go to school. The appellant held her arm. The victim then complied to his demand for approximately two minutes. He then laid the girl on the ground, took down her pants and attempted to have sexual intercourse with her during which she stated that she had to go to school and that she would be late. The appellant then permitted her to get up and

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[164] R. v. Blackburn (1986).

[165] Criminal Code section 267 (2).

[166] R. v. Brun (1987).

[167] R. v. Wood (1986).

[168] R. v. Works (1991).

> go to school. The girl did not complain to anyone until she informed her grandmother upon her return from school.[169]

The offender "held" rather than "grabbed" her arm, he "laid" her on the ground rather than "forced" her down, he "permitted her to get up" rather than "stopped the assault". Finally, the victim's complaint could have read "The girl complained as soon as she was safely home when" she informed her grandmother upon her return to school.

Some judges, on the other hand, do focus on the psychological harm to sexually assaulted children. One judge talked about the "harm done to an individual by continued subjection...to unnatural behaviour."[170] Another rejected the defence counsel's submission "that there is no evidence that this child suffered any ill effects or any psychological damage." He remarked to the offender that he can't imagine that any little girl

> could not be seriously affected and have her views of life and the relationship of males and females seriously distorted by the fact that a mature man would do the acts that you did.[171]

Other judges also comment on the fear children victimized by sexual assault feel.[172]

Adult women are also sometimes seen as experiencing long-term effects as a result of sexual assault. Judges see attacks at knifepoint as "a terrifying experience"[173], as "acts of horror, terror, trauma, and indecency"[174], and as involving "a high degree of psychological trauma."[175] An offender who sexually assaulted a pregnant woman at knifepoint was sentenced to ten years. The judge was quoted in the newspaper as saying, "the attack was degrading and humiliating for the woman."[176]

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[169] R. v. Shunamon (1986).

[170] R. v. LD (1990).

[171] R. v. DEL (1988).

[172] R. v. LGL (1989); R. v. CES (1988).

[173] R. v. Borden (1990).

[174] R. v. Challis (1990).

[175] R. v. White (1989).

In a sexual assault case where the offender had unlawfully confined the victim for eight hours, the judge imposed a sentence of three and a half years, saying the offender "had put the woman through a great deal of emotional trauma."[177] Listed as an aggravating factor in the attack on the 86-year-old woman after a break and enter is "the traumatic effect on the victim is such that she can no longer live alone in her own home."[178]

"Reasonable" Force

Pertinent to the question of sentencing is how much force or violence is considered reasonable when trying to gain access to a woman's body for sexual gratification. Perhaps a "reasonable" amount of violence is that amount necessary in order to gain access to the child or woman's body, while "excessive" violence would be that which went beyond gaining access.

In one case, a judge expressed concern about using a beer bottle in a gang rape. Obviously the young men already had access to the young woman's body: their crime was a "deliberate violent" act that "went beyond sexual gratification".[179] It is unclear whether this judge would have been less concerned if the assault had involved only that amount of force necessary for the assailants' sexual gratification

In a case reported in the Daily News, the offender lied his way into a woman's apartment, then forced her to perform oral sex on him. In sentencing the man, the judge is quoted as saying, "I'm satisfied that oral sex took place without consent and that the force used was minimal...."[180], but clearly the force used was the **minimum necessary to get the victim to submit**. Even less force was possible in the circumstances: he could have decided not to assault her.

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[176] Isenor, as reported in the Daily News and the Chronicle-Herald, March 23, 1990.

[177] Sampson. "Sexual assault brings 42-month sentence", Chronicle-Herald, January 18, 1990.

[178] R. v. Blackburn (1986).

[179] Clayton, (F.), as reported in the Chronicle-Herald, October 31, 1990.

[180] Thurston, as reported in the Daily News, August 23, 1990.

In a case involving a woman who was sleeping in her own home when a trusted man decided to assault her, the force used is considered minimal by the judge. The assault stopped after the woman woke up and fought the assailant off.[181] In a case reported in the newspaper where the accused is found not guilty, the judge reportedly said,

> ...[W]hen the activity was considered undesirable by one of the parties it was stopped. It is terrible this type of thing must come before the criminal section of the Supreme Court. There should be a better place for it.[182]

What these three cases seem to indicate is that the assaults began only after the woman objected. Before that, perhaps while they are sleeping, the consent of the woman is assumed. It is our view that the violence began when the assailant initiated the assault, and not simply when the victim tried to stop it. Perhaps it is reasonable men who limit the amount of force they use to the minimum necessary to get their victims to submit. Possibly it is only unreasonable men who use knives, beer bottles, or other weapons when there are so many other ways to gain access to children's and women's bodies.

> What we see in women's accounts is that when outright violence was not used by abusers it was either because they simply chose not to use it--and, of course, the choice is theirs--or because other tactics worked better for them.[183]

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[181] R. v. Works (1991).

[182] Sheppard, as reported in the Chronicle-Herald, April 13, 1990.

[183] Women's Research Centre (1989) p. 94.

RESIDUAL EFFECTS

Changes to the Criminal Code

The final sections looking at issues that affect sexual assault sentencing examine how deeply imbedded in the past are the sentencing decisions of today and tomorrow. First is the issue of "residual effects," that is, how our courts operate as if the sexual assault laws had not been changed in 1983. Despite changes to the law, some Nova Scotia judges continue to consider recent complaint, corroboration, and, to a lesser extent, sexual reputation, in sexual assault cases.

Changes to the Criminal Code regarding sexual assault offences were proclaimed on January 4, 1983. Included among the new sections was one dealing with children under the age of 14. Section 246.1 (2) [now s. 150.1 (1)] of the Code stated that when an accused is charged with sexual assault and the victim is under the age of fourteen years,

> it is not a defence that one complainant consented to the activity that forms the subject matter of the charge unless the accused is less than three years older than the complainant.

Still "on the books" was s. 146, sexual intercourse with a female under age 14 or between 14 and 16:

> Every male person who has sexual intercourse with a female person who (a) is not his wife, and (b) is under the age of 14 years, whether or not he believes that she is 14 years of age or more, is guilty of an indictable offence and is liable to imprisonment for life.

Section 140 noted that consent was not a defence under s.146 (1).

Some elements of the older s. 146 were that the Crown had to prove penetration,[184] that wives were not protected under the section, that mistaken belief about her age was not a defence, and that only men could be charged.

The revised s.246.1 (2) encompassed a broader range of sexual activity, did not exempt married persons from protection against assault, specified that consent was not a defence, and recognized that either males or females could be offenders or victims. The new section also "countenances a certain degree of consensual sexual contact between young people."[185]

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[184] Ruebsaat (1985) p. 27.

On January 1, 1988, Bill C-15 repealed s.246.1 (2) and replaced it with several interrelated provisions concerning the consent of immature persons to sexual activity.[186] Where a person is accused of sexual assault (now ss. 271, 272, 273) and other sexual offences, s. 150.1 (1) to (5) details the age differences that are exempted from criminal offences. For example, where the complainant is 12 or 13 and the accused is 12 to 16, consent is a defence. A mistaken belief that the victim is over 14 is a defence but only if "the accused took all reasonable steps to ascertain the age of the complainant."[187] Section 173 deals with indecent exposure, and under-14-year-olds are again specified as in need of special protection.[188]

On January 4, 1983, Bill C-127 abolished special evidentiary rules relating to sexual offences:

> The doctrine of recent complaint was abrogated by section 246.5 [now 275]. Section 246.4 [now 274] removed the requirement for corroboration in sexual assault cases. Sections 246.6 and 246.7 [now 276 and 277] prevented the admission of evidence of the complainant's sexual history and reputation, subject to certain limited exceptions.[189]

Recent Complaint

While the term "recent complaint" is no longer used by judges in the cases examined for this report, "staleness", or "delay" is sometimes used to indicate its opposite. In one case a guilty finding is overturned:

> Under all the circumstances, particularly the 29-year delay and the lack of corroboration of the complainant's story denied as it is by the

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[185] Ruebsaat (1985) p. 27.

[186] Bryant (1989) p. 95.

[187] Criminal Code section 150.1 (4).

[188] Criminal Code section 173 (2).

[189] Ruebsaat (1985) p. 1.

> appellant, we are of the opinion that justness and fairness dictate an acquittal.[190]

Although his two step-daughters were frequently assaulted until they left home in 1980, one offender was sentenced to one day plus three years probation. The judge stated as a mitigating factor that "[s]ince 1980 there has been no improper conduct with the victims."[191]

One appeal judge set aside the conviction and entered an acquittal: the child's credibility was the main issue at the trial, her evidence found to be unsatisfactory and contradictory at the appeal. "The allegations [of the child]," the judge said, "were made months after the child was returned to her custody and in response to questioning by the mother."[192]

Finally, in reducing a sentence from seven to four years, the judge found it pertinent to remark that "The girl did not complain to anyone until she informed her grandmother upon her return from school" later that day.[193]

One offender was convicted of assaulting two daughters and two of their young friends. In increasing the sentence the appeal judge said,

> The learned sentencing judge, in refraining from imposing a lengthy non-intermittent term for this offence, was unduly influenced by the staleness of the offence that had ceased over four years before with [the offender's eldest daughter]. The so-called staleness would have been more significant if the respondent had refrained from further assaults on young females in his home.[194]

In examining changes in the handling of sexual assault cases since the 1983 amendments, Ruebsaat found evidence that "new cases revive the historically unfounded presumption that the virtuous woman would complain at the first opportunity."[195] But as we have seen in the widely publicized case of Frederick Francis Benson (who eventually received 13 years for a number of sexual assaults dating back 30 years),[196] victims may wait many years until reporting the crime.

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[190] R. v. MacIsaac (1988).

[191] R. v. Drysdale (1988).

[192] R. v. EWC (1989).

[193] R. v. Shunamon (1986).

[194] R. v. WDP (1987).

[195] Ruebsaat (1985) p. 107.

Those who treat survivors of sexual assault see a number of reasons for the delay. The factors that victims list in deciding not to report a crime to the police (such as fear of revenge) are likely to similarly affect delays in reporting. Material produced by the Women's Research Centre in Vancouver states that "[l]iving in an environment of physical, sexual and emotional violence produces fear, watchfulness, and attempts to please and not 'rock the boat'."[197] Those who were assaulted when very young may not show symptoms of abuse or even remember the assaults until puberty, childbirth, or until their own children reach the age they were when abused.[198]

Corroboration

Corroboration is no longer required in cases of sexual assault, but some Nova Scotia judges still look for "confirmatory" or "independent" evidence, as the following case notes illustrate:

> [The trial judge] recognized that the burden was on the Crown to prove the case beyond a reasonable doubt and noted that, but for some evidence he considered confirmatory of the complainant's version of events before the party left the group, he would probably be left with a reasonable doubt.[199]
>
> [The trial judge said] at one point that if the only evidence was that of the complainant 'the trial probably wouldn't be proceeding.'[200]
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> [The trial judge said] if the evidence was only of the appellant and the complainant 'it would be something of a standoff.' [He went

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[196] As reported in the Daily News, January 11, 1990, and the Chronicle-Herald, January 19, 1990.

[197] Women's Research Centre (1989) p. 36.

[198] Hindman (1989) pp. 51-53.

[199] R. v. O'Brien (1988).

[200] R. v. MacDonald (1989).

> on, however, to refer to the evidence of the social worker and of the two medical doctors.][201]
>
> [The appeal judge dismissed the appeal on conviction and said] there was independent evidence to support the story of the victim and no evidence to confirm the version of events related by the appellant.[202]

Finally, in a recent case reported in the Chronicle-Herald, the judge found both the accused and the complainant credible in their versions of the incident, and so dismissed the charge. A man had been charged with touching for a sexual purpose, and the judge said the complainant was a credible witness and "could readily have concluded she was being touched for a sexual purpose." While the judge was not satisfied with the accused's explanation that he was "a touchy, feely person" and only accidentally touched his young employee's breasts, the judge maintained she "was not satisfied beyond a reasonable doubt that the touching was for a sexual purpose."[203]

The Victim's Sexual History and Reputation

Although lawyers and judges seem to refrain from commenting directly on the victim's past sexual history, young victims under the age of 14 have sometimes been called "sexually experienced"[204] and "sexually precocious."[205] More commonly judicial comments hint at "loose" lifestyles, such as the judge commenting on the wisdom of the victim inviting a man into her home[206], or by noting that the assault was preceded by the victim hitch-hiking[207], that the victim "spent a good deal of her time at local clubs,"[208] that the victim previously consented to sex with the accused then "says previously consented to sex with the accused then "says she gradually cooled to him,"[209] and that the victim was a parolee[210].

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[201] R. v. ELH (1990).

[202] R. v. Melnick (1988).

[203] "Judge dismisses sex charge," Chronicle-Herald, February 23, 1991.

[204] R. v. Joudrey (1985).

[205] R. v. McClement (1988).

[206] R. v. Sparks (1986).

[207] R. v. Anderson (1985).

[208] R. v. Madore (1985).

Some judges make a point of working to counteract stereotypes, such as the judge who said the fact that the woman had once been a prostitute "did not lessen the crime."[211] A woman who was a dancer in a tavern apparently received only sympathy, not blame or innuendo, from the judge. "The record reveals the story of a violent attack on the victim which must have been a terrifying experience for her...."[212] And, in a case already cited, the encouragement of a 16-year-old with a troubled past did not excuse her foster-father's taking her up on sexual activity.[213]

The idea that women or girls who are already sexually active do not suffer as much from sexual assault is no longer a legally acceptable approach to gauging the harm done to the victim. Neither are judges or juries allowed to infer dishonesty from a woman's lack of chastity. However, it is not evident that judges have in fact stopped considering a victim's sexual history, as many find it pertinent to describe it in some way when relating their decisions. As Cosineau reported to the Canadian Sentencing Commission,

> criminal justice systems can adapt to a reform effectively nullifying its intent.... Criminal justice systems are also known to quietly adapt to changes in ways that negate the impact of reforms and nullify the intentions of the reform advocates or sanctioning.[214]

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[209] R. v. Zwicker (1990).

[210] R. v. Melnick (1988). It is difficult to ascertain how mitigating these seemingly objective recitals of the "facts of the case" are in determining the final decision or sentence. The sentences for the offences against adult women described in the paragraph above range from not guilty to six and a half years, with an average of under two years.

[211] Wareham, as reported in the Daily News, March 26, 1991.

[212] R. v. Borden (1990).

[213] R. v. Langille (1989).

[214] Cousineau, 1988, pp. 106, 116.

Penetration

Penetration continues to be considered by some judges in sentencing, with lack of penetration sometimes listed as a mitigating factor.[215] The crime of rape required proof of penetration; "lesser" offences such as indecent assault were used when penetration did not occur or could not be proved. The new law on sexual assault can include a variety of sexual acts, with violence, rather than the degree of sexual contact, being the pertinent aspect of escalating the crime from simple sexual assault, to sexual assault with a weapon or causing bodily harm, or aggravated sexual assault.

Precedent Set by Past Cases

Finally, the fact that sentencing relies on past cases: where there were low sentences in the past, there will be low sentences in the future. "A fit sentence is one that falls within a reasonable range as established by the cases."[216] An offender charged under the first level of sexual assault appealed his sentence of three and a half years: "Counsel for the appellant has referred us to some recent decisions of this Court, where, generally speaking, the defendant has been sentenced to less than three years."[217]

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[215] See for example R. v. MC (1987).

[216] R. v. Works (1991).

[217] R. v. Cooke (1986).

CONCLUSION AND RECOMMENDATIONS

In sentencing offenders, judges look at the nature and severity of the crime; the offender's circumstances, including the likelihood of rehabilitation or the need for specific deterrence; and the impact on the victim.

We have seen mitigating factors, or those tending to reduce the length or severity of the sentence, based on the offender's characteristics, such as the offender's age (youthful, seen as youthful, or aged); lack of criminal record; employment (including having limited prospects, a good job, a family to support or a business to run); and the perception of the offender as ill or deserving of sympathy.

Also seen as tending to reduce sentences are perceptions of the nature of sexual assault, such as sexual assault not causing harm to the victim, or not being "excessively" forceful or violent, or as an act of misdirected or overzealous lust rather than as a violent assault.

As well, we have seen as aggravating factors such situations as very young victims who have reason to trust the offender, and as aggravating the circumstances surrounding stranger-rape, particularly when weapons are used. A relationship of trust among adults is not always seen as aggravating and may even cast a shadow of blame or responsibility for the assault on the victim.

The Nature of Sexual Assault

The Nova Scotia Advisory Council on the Status of Women recommends that a concerted effort be made to ensure consistency in sexual assault sentencing across Nova Scotia.

Sentences could become consistent, in the minds of the general public as well as offenders and potential offenders, if there were more agreement among the judiciary and Crown prosecutors as to the nature of sexual assault.

Following the definition recently offered by the Supreme Court of Canada, we can see that sexual assault is a crime of violence. The Supreme Court defined sexual assault as

> an assault within one of the definitions of that concept in s. 244 (1) [now s. 265 (1)] of the Criminal Code which is committed in circumstances of a sexual nature, such that

> the sexual integrity of the victim is violated.[218]

Looking at the first part of the definition referring to the assaultive nature of the crime, and at the section in the Criminal Code referred to, we can see that sexual assault is, first, a criminal use of force.[219] The section delineates a number of ways in which force could be used in the commission of a sexual assault; applying force directly or indirectly, threatening force, or otherwise making the victim believe the assailant has the "ability to effect his purpose."[220] Thus any means the assailant uses to effect his purpose is considered force, not only through the use of knives or other weapons, for example.

The Severity of the Crime

The Nova Scotia Advisory Council on the Status of Women recommends that the lengths of sexual assault sentences become more consistent, and that the maximum sentences outlined in the Criminal Code be considered more important than precedents set by past cases.

Sentencing in cases of sexual assault could become more predictable if there were more consistent criteria by which the judiciary applies sentencing. Relying heavily on past cases to determine appropriate sentencing length is problematic if historically the courts have not treated sexual assault very seriously. Gender bias pervades the courts, and a more critical look at precedent is necessary to encourage more appropriate patterns of sentencing.

Looking again at the Supreme Court definition, we see that sexual assault is (1) a crime of violence or an assault using force that (2) occurs within a context involving sexuality. That this second component compounds the severity of the crime can be seen by reference to the Criminal Code: Assault under s. 266 has a maximum sentence of five years; "simple" or the corresponding first level of sexual assault (s. 271) has a maximum sentence of ten years; common assault using a weapon (s. 267) 10 years; sexual assault using a weapon (s. 272) 14 years; aggravated assault (s. 268) 14 years, aggravated sexual assault (s. 273) life imprisonment.

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[218] Bryant (1989) p. 95.

[219] With children under 14 years of age, it is not only force that is criminal, but the act of touching for a sexual purpose under ss. 151 and 152.

[220] Criminal Code section 265 (1).

Thus the fact that force was used to get the victim to submit to acts of a sexual nature (rather than to, say, get the victim to move his or her car from a parking space) does not reduce and should not cloud the severity of the assault; it compounds it. Motivations such as "lust" or "sexual need" or wanting to park your car in a particular parking space do not justify violence or the use of force.[221]

Prevention, Deterrence, Rehabilitation and Support

The Nova Scotia Advisory Council on the Status of Women recommends that the government of Nova Scotia commit more resources for public education on the nature of sexual assault and its impact on victims and their families, and especially for the provision of comprehensive support services for victims of sexual assault.

The Nova Scotia Advisory Council on the Status of Women recommends that relevant government departments (Attorney General/Solicitor General, Community Services, and Health and Fitness) undertake an evaluation of the effectiveness of treatment programs for sexual assault offenders.

The Nova Scotia Advisory Council on the Status of Women recommends that the government of Nova Scotia urge the federal government to establish a forensic treatment centre for sexual assault offenders in Nova Scotia.

Those working with sexual assault victims and offenders could coordinate their efforts by providing information, support, and safety to the victim. Moreover, the offender must be called to account for harm done, then any resources necessary must be utilized to prevent or restrain him from re-offending.

What women are seeking from the justice system when they report a crime of violence is for the violence to stop:

> Females were more likely than males to report incidents [of crime victimization] in order to stop or prevent their recurrence (82 percent) and because of a need to receive protection (55 percent). Incidents involving males, on the other hand, were more likely than those involving females to be reported because of a need on the part of the victim to file an

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[221] The justified uses of force, as delineated in the Criminal Code, are related mainly to maintaining public order.

> insurance or compensation claim and the desire to catch and punish the offender.[222]

The risk of re-offending is high even for treated offenders. One eminent Canadian lawyer suggests this risk is worth it:

> Unfortunately,...failures [in treating sex offenders] may occur, which victimize, and perhaps cost the lives of, the innocent. This discloses the public and political dimensions of treatment release programs for aggressive sex offenders and the degree to which such programs must have not only the courage to proceed, but the courage to fail.[223]

The fact that women do not find this kind of risk acceptable is evidenced by the suit brought against the Toronto police force by a woman who was assaulted by a serial rapist of whom the police were aware. "Jane Doe," supported by the Women's Legal Education and Action Fund, is

> seeking a decision that establishes that police have a duty when setting policies and practices to address the fact that women are targets of sexual assault and to provide women with the same level of safety afforded men.[224]

The Criminal Justice System's Responsibility

The Nova Scotia Advisory Council on the Status of Women recommends that all judges, Crown prosecutors, law enforcement and corrections personnel in Nova Scotia receive, on a mandatory basis, education on the nature of sexual assault, the impact of sexual assault on the victim, the recidivism rate and the effectiveness of treatment for sexual assault offenders.

The Nova Scotia Advisory Council on the Status of Women recommends that the Department of Attorney General appoint a full-time Crown prosecutor specializing in prosecuting cases of sexual assault. This individual should also assume responsibility for peer education.

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[222] Statistics Canada (1990) p. 162. What "most battered women really want from the criminal justice system is deterrence, protection, and community condemnation of the violence against them": National Association of Women and the Law (1981) p. 136.

[223] Dickens (1981) p. 67.

[224] Lennon (1990) p. 9.

The Nova Scotia Advisory Council on the Status of Women recommends that the offender's employment record, family status, relationship to victim, and absence of criminal record not be considered mitigating factors in sexual assault sentencing.

The Standing Committee on Justice recognized five aspects necessary to allow victims to "restore their sense of worth and get on with their lives": They are information, support, recognition of harm, reparation of harm, and effective protection from revictimization or retaliation.[225]

Thus excusing the offender's violence as being out of character or due to youth or ignorance, and relying on factors such as employment to produce rehabilitation neither calls the offender to account for his offence, nor assures the victim or other women and children of their basic safety.

> ...[N]o changes to the Criminal Code are needed to make men more accountable for their abusive conduct or to better protect women and children... What is required is a willingness to be educated, to suspend one's disbelief long enough and thoroughly enough to consider how the world might look through the eyes of another.[226]

As Madame Justice Bertha Wilson has indicated, suggestions and recommendations coming from outside the judiciary can be seen as "the claims of special interest groups" and thus have limited effectiveness. However, the Canadian Judicial Centre has available a session on gender equality, that discusses many of the issues raised here, in which judges may participate.[227] As well, judges and lawyers in other jurisdictions have studied and set up task forces regarding the treatment of women in the justice system.[228]

The Nova Scotia Advisory Council on the Status of Women recommends that the Department of Attorney General implement a tracking system in which details of all sexual assaults and sexual offences are followed from the victim's reporting of the incident to the final actions taken by police, Crown prosecutor, and judiciary.

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[225] Standing Committee on Justice and the Solicitor General (1988) p. 13.

[226] Gaudet and Pasquali (1990) p. 2.

[227] Hackett (1990).

[228] For example, Schafran and Walker (1986) and Brown and Penner (1988).

The absence of comprehensive data on sexual assault sentencing clearly impedes any analysis, critique and positive change of sentencing patterns in Nova Scotia.

The Impact on the Victim

The Nova Scotia Advisory Council on the Status of Women recommends that all victims of sexual assault be granted the right to file a victim impact statement. Assistance in preparing impact statements should be provided, if required. The statements should be presented to the court by the Crown prosecutor or the victim. The use of such statements should become consistent in the courts.

Women are at about seven times the risk of sexual assault as are men.[229] While young urban women are most concerned about attack or threat of attack (69 percent), urban males aged 45 to 64 are most concerned about theft (51 percent). Women in both urban and rural locations are nearly twice as likely as males to express concern about physical violence.[230] Women are more likely than men to be assaulted in their own home, in someone else's home, or by relatives.[231]

There is, according to Elizabeth Sheehy, "little room for women's perceptions of what conduct infringes upon sexual integrity to enter the judicial construction of the elements of the offence."[232] While some may consider assault a "reasonable" but perhaps "over-zealous" way to gain access to women's and children's bodies, women have cause to see sexual assault from a different point of view. It is important to recognize, as the Women's Research Centre of Vancouver points out, "the sexual terrorism that pervades our lives and leaves us with no safe place, no way of knowing which of us will be next, or when."[233] This form of terrorism is pervasive, "instilling in all women a fear of random male violence."[234]

More predictability in sentencing could be achieved if there were an appropriate weight given to the impact on the victim of the offence. Crown prosecutors must also present such information if judges are to take it into account when sentencing.

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[229] Statistics Canada (1987) p. 6.

[230] Statistics Canada (1990) p. 162.

[231] Johnson (1988) p. 27.

[232] Canadian Advisory Council on the Status of Women (1987) p. 20.

[233] Women's Research Centre (1989) p. 107.

[234] Boyd and Sheehy (1986) p. 15.

There are numerous studies now available which detail the effects of sexual assault and sexual abuse on women and children. One such study shows that the "commonly held ideas" are often wrong: for example, "terror-building activity" does not necessarily involve weapons or extreme violence and can be more traumatic than the mere fact of penetration [235]. If "common sense" dictates that a victim could not possibly be harmed by a sexual assault, such research can be used by the Crown or judge to demonstrate the reasonableness of an assertion that the victim has indeed suffered harm. The nature of sexual assault invariably carries with it long-term consequences for the recovery of victims. This significant difference between sexual assault and some other crimes is rarely cited in sentencing.

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[235] Hindman (1989) pp. 67, 80.

APPENDIX - CASE NOTES

ANDERSON, Donald Robert	TRIAL	APPEAL
Court	Not available	Nova Scotia Supreme Court
Date	Not available	April 9, 1985
Judge	Judge and jury	Hon. Malachai C. Jones
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	Guilty/No sentence entered	Appeal on conviction dismissed
	VICTIM	OFFENDER
Age		
Relationship		
Other Background	Was hitch-hiking	

Nature of Offence

The victim was hitch-hiking and when she got out of the car in a remote area near her home, the assailant "ran after her and caught her. After seizing her, he struck her in the face." In the car, the assailant "made her remove her clothing and then had sexual intercourse with her, followed by indecent acts." She obtained help at a nearby farmhouse.

SOURCES: NSR (unreported); NSLN 202/19

BEE	TRIAL	APPEAL
Court	County Court #1 (Halifax)	Nova Scotia Supreme Court
Date	June 3, 1988	November 29, 1988
Judge	Hon. Felix A. Cacchione	Hon. David R. Chipman
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	Suspended sentence and 3 years probation	2 months
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	[Total: suspended sentence and 3 years probation]	2 months consecutive [Total: 4 months]
	VICTIM	OFFENDER
Age	11 and 13 at time of assaults	35
Relationship	Daughter	
Other Background		"...returned to active participation in his church...has the continued support of his second wife."
Nature of Offence "...these sexual assaults are at the extremely low end of the scale." "On each occasion, the offence consisted of indecent fondling which was quickly rejected by the victim."		

SOURCES: NSR (unreported); NSLN 268/12

BENSON, Frederick Francis	TRIAL	APPEAL
Court	Nova Scotia Supreme Court	
Date	December 1990 conviction January 18, 1991 sentencing	
Judge	Hon. Hilroy S. Nathanson	
Charge 1	Rape	
Finding/Sentence	3 years	
Charge 2	Rape	
Finding/Sentence	5 years	
Charge 3	Assault causing bodily harm with intent to wound	
Finding/Sentence	1 year	
Charge 4	Assault causing bodily harm with intent to wound	
Finding/Sentence	2 years	
Charge 5	Indecent assault	
Finding/Sentence	2 years	
Charge 6	Trying to procure a miscarriage	
Finding/Sentence	Not guilty [Total: 13 years]	Appeal planned by defence

Benson (cont.)	VICTIM	OFFENDER
Age	6-16 at time of assaults	55 at time of conviction
Relationship		Baby-sitter
Other Background	The abuse occurred between 1954-1964, victim now middle-aged	Alcoholic

Nature of Offence

[The victim's] body...is scarred from chest to ankle.... Describing the horror of the daily physical and sexual abuse she suffered, the woman said she thought at the time it was what all young girls endured. She said she kept the abuse secret from her family because of Mr. Benson's threats to kill them and burn the family home. She said she never reported him to authorities because he threatened to kill her and only came forward when he returned to Nova Scotia 25 years later. She said she was deprived of a normal childhood and education because of Mr. Benson and became a "very good liar,". The victim bore two children fathered by the offender and testified that she kept silent over the years because she feared he would fulfill a threat to kill her. She came forward in 1989, when she unexpectedly met Mr. Benson in a convenience store after his return to the province.

SOURCES: "Benson to appeal sex convictions," Daily News, January 11, 1991; "Sadistic sex assault nets 13-year jail term," Chronicle-Herald, January 19, 1991; "Sexual abuser awaits word of bail after two-day hearing," Chronicle-Herald, February 14, 1991

BLACKBURN, **Blair Whitney**	TRIAL	APPEAL
Court	County Court #1	Nova Scotia Supreme Court
Date	February 20, 1986	September 22, 1986
Judge	Hon. P.J. O'Hearn	Hon. Angus L. Macdonald
Charge 1 Finding/Sentence	s.246.1 sexual assault	
Charge 2 Finding/Sentence	s.306 (1)(b) break and enter [Total: 3 years]	[Total: 6 years]
	VICTIM	OFFENDER
Age	86	25
Relationship		Friend of victim's nephew; intoxicated at time of offence; married with two young children; previous convictions for break and enter and theft.
Other Background		

Nature of Offence

"...breaking into an occupied dwelling house at night and raping an innocent woman... the appellant remained in the premises for several hours...." "...she was grabbed from behind by the accused. She tried to struggle...she was held...with sufficient force to cause bruising to her arms.... The accused felt her breasts and shoulders, took off his jeans, and attempted to have sexual intercourse with her while behind her on the steps."

SOURCES: 75 NSR (2d) 30; NSLN 225/18

BORDEN, **Josh Randall**	TRIAL	APPEAL
Court	Nova Scotia Supreme Court (Pictou)	Nova Scotia Supreme Court
Date	June 18, 1990	December 4, 1990
Judge	Hon. H.S. Nathanson (& jury)	Hon. David R. Chipman
Charge	Sexual assault	
Finding/Sentence	4 years	Accused's appeal on sentence dismissed
	VICTIM	OFFENDER
Age		29
Relationship		
Other Background	"dancer in a tavern"	15 previous convictions, 1 for sexual assault with a weapon.

Nature of Offence

"...he was denied entry into her room. A short while later, he returned and made his way into the victim's room and expressed, in rather coarse terms, a strong desire to have sexual intercourse with her. Within a short period of time, he grabbed the victim twice, but on both occasions was successfully rebuffed when the victim grabbed his penis and twisted it. The appellant finally left but not before the victims's underwear was torn and she was grabbed by the throat and left with a bruise on her neck. As well, the telephone was torn out of the wall leaving the line dead."

SOURCES: NSR (unreported); NSLN 304/13; "Exotic dancer tells court of sexual assault in motel," Chronicle-Herald, May 24, 1990

BROWN	TRIAL	APPEAL
Court	Not available	Nova Scotia Supreme Court
Date	Not available	November 13, 1985
Judge	Not available	Hon. Kenneth M. Matthews
Charge 1 Finding/Sentence	s.146 (1) sexual intercourse under 14 2 years	2 years
Charge 2 Finding/Sentence	s. 146 (1) sexual intercourse under 14 2 years consecutive	2 years concurrent
Charge 3 Finding/Sentence	s.246.1 (1)(a) sexual assault 3 months	3 months
Charge 4 Finding/Sentence	s.246.1 (1)(a) sexual assault 3 months consecutive [Total: 4½ years]	3 months consecutive [Total: 2½ years]
	VICTIM	OFFENDER
Age	(under 14)	
Relationship		
Other Background		"low intellect...employed full-time...first-time offender...no breach of trust or violence involved."
Nature of Offence "...two offences of having sexual intercourse with a female person under the age of 14... two offences of sexual assault.... ...no breach of trust or violence involved."		

SOURCES: 70 NSR (2d) 152; NSLN 212/2

BRUN, **Yvon Andre**	TRIAL	APPEAL
Court	County Court #1	Nova Scotia Supreme Court
Date	August 10, 1987	November 17, 1987
Judge	Hon. Ian H.M. Palmeter	Hon. Lorne O. Clarke
Charge 1	s.245.1 (b) assault causing bodily harm	
Finding/Sentence	6 months	12 months
Charge 2	s.246.1 (1)(a) sexual assault	
Finding/Sentence	9 months concurrent [Total: 9 months]	2 years less a day concurrent [Total: 2 years less a day]

	VICTIM	OFFENDER
Age		31
Relationship	Friend of assailant	
Other Background		"...first offence...no serious prior record...."

Nature of Offence

The victim, who had been having a friendly relationship with the respondent for over a year, visited the respondent at his apartment at about 2:30 a.m. When she arrived at the top of the landing leading to the apartment, he hit her in the chest with his fist and knocked her to the floor. He administered mouth-to-mouth resuscitation until she regained some degree of consciousness. Then he proceeded to pound her even more with blows to the face and chest and made some attempt at strangulation. Her face was bleeding and she suffered a broken nose. The second offence occurred when he took the victim into his apartment and sexually assaulted her.

SOURCES: 81 NSR (2d) 384; NSLN 249/11

BRYSON, **Douglas Neil**	TRIAL	APPEAL
Court	Provincial Court (Halifax)	Nova Scotia Supreme Court
Date	February 24, 1987 May 8, 1987 sentencing	September 23, 1987
Judge	Hon. William C. Atton	Hon. Kenneth M. Matthews
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	1 day (considered served in court), 2 years probation and 100 hours of community service	9 months
	VICTIM	OFFENDER
Age		27
Relationship		
Other Background		Married with 3-year-old child. He had seen victim in Point Pleasant Park earlier that day.

Nature of Offence

The offender followed the victim, both driving, with his headlights flashing, horn honking, etc. He said he needed to talk to her, she stopped and he got in the front seat. He grabbed her shoulder, "then placed his hand between her legs, grabbed her hand and placed it on the front of his trousers making motions up and down. She pulled her hand away. He repeated the performance until his trousers were wet. He then asked her to leave [her friend's 3-year-old boy] in the car and go to a friend's house. She refused. He then left."

SOURCES: 80 NSR (2d) 334; NSLN 245/20

CES	TRIAL	APPEAL
Court	County Court #4	
Date	March 17, 1988	
Judge	Hon. Donald M. Hall	
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	Guilty/Not available	
	VICTIM	OFFENDER
Age	15	
Relationship	Daughter of offender's common-law wife	"in loco parentis with respect to the complainant"
Other Background		Had been family friend first, close friend of now-deceased father of victim

Nature of Offence

The assailant repeatedly asked her to have sexual intercourse, she repeatedly refused. Assailant persisted in his demands, assailant had intercourse with her. "She said that she...went down to the bedroom with him because she was scared, that she was always scared of the accused."

SOURCES: 84 NSR (2d) 30; NSLN C26/10

CHALLIS, Jonathan	TRIAL	APPEAL
Court	Nova Scotia Supreme Court (Halifax)	Nova Scotia Supreme Court
Date	June & September 9, 1989	January 30, 1990
Judge	Hon. R.M. Rogers (and jury)	Hon. Lorne O. Clarke
Charge 1 Finding/Sentence	s.272 sexual assault with a weapon 5 years concurrent	Quashed (only more serious conviction should have been entered)
Charge 2 Finding/Sentence	s.273 aggravated sexual assault 14 years [Total: 14 years]	Appeal re sentence dismissed [Total: 14 years, also issued order barring firearms]
	VICTIM	OFFENDER
Age		24
Relationship		
Other Background	Working as a chambermaid, "totally innocent woman"	Grade 11 education, no criminal record
Nature of Offence Offender called chambermaid into his motel room. The half-hour assault involved knife, victim bound, gagged, indecent acts, sexual intercourse. "...acts of horror, terror, trauma and indecency...."		

SOURCES: 95 NSR (2d) 57; NSLN (289/16); "Court reserves decision on rape sentence appeal," Chronicle-Herald, January 17, 1990; "Appeal to reduce sentence rejected by Supreme Court," Chronicle-Herald, January 31, 1990.

CHISHOLM, **Randall Douglas**	TRIAL	APPEAL
Court	County Court #1	Nova Scotia Supreme Court
Date	February 19, 1987	November 30, 1987
Judge	Hon. Ian H.M. Palmeter	Hon. Lorne O. Clarke
Charge 1 Finding/Sentence	s.246.1 (1)(a) sexual assault 3 months	1 year
Charge 2 Finding/Sentence	s.246.1 (1)(a) sexual assault 3 months	6 months
Charge 3 Finding/Sentence	s.246.1 (1)(a) sexual assault 3 months concurrent	6 months concurrent
Charge 4 Finding/Sentence	s.85 possession of a weapon 3 months [Total: 9 months and 2 years probation and no firearms for 5 years]	1 year [Total: 2 years, no probation] "general deterrence...youthful victims"
	3 VICTIMS	OFFENDER
Ages	10, 10, 11	23
Relationship		
Other Background		Prior weapon offence

Nature of Offence

"The respondent lured...a 10-year-old girl to his trailer home ostensibly to see his talking bear doll. After he had her sit on his lap, he commenced fondling her sexual organs and sucking her breasts." "The second and third offences occurred...at...[a] playground...." The offender picked up a 10-year-old girl, "put his hand through her shirt and fondled her breasts...[she] kicked until he let go." He pushed the swing of an 11-year-old girl, "placing his hands on her posterior. He untied the strings on her bathing suit and [she] told him to stop." The 4th offence: "...he threatened to slaughter a [4-year-old] child, the two baby-sitters [14 and 15] and kill himself [with kitchen knives] if his girlfriend did not return."

SOURCES: 81 NSR (2d) 421; NSLN 249/22

CJM	TRIAL	APPEAL
Court	Youth Court	Nova Scotia Supreme Court
Date	Not available	December 30, 1986
Judge	Hon. T.T. Daley	Hon. Leonard L. Pace
Charge 1	s.246.1 (1)(a) sexual assault	
Finding/Sentence	1 year open custody	time served (one month)
Charge 2	s.246.1 (1)(a) sexual assault	
Finding/Sentence	2 years probation	2 years probation "...the emphasis should be placed on the treatment and rehabilitation aspects in sentencing young offenders."

	2 VICTIMS	OFFENDER
Age		15 (Young Offender)
Relationship	Granddaughters of assailant's foster-parents	
Other Background	Lived in same home	"remorseful," no prior record

Nature of Offence

He had the girls strip below the waist and attempted sexual intercourse. He denied penetration. The assaults occurred twice a week on each girl for a two-month period.

SOURCES: 77 NSR (2d) 1; NSLN (232/7)

CLAYTON	TRIAL	APPEAL
Court	Provincial Court (Dartmouth)	
Date	Mary 29, 1990	
Judge	Hon. Reginald B. Kimball	
Charge	Sexual assault	
Finding/Sentence	9 months and 2 years probation	
	VICTIM	OFFENDER
Age		20
Relationship	Former girlfriend	
Other Background	Now pregnant with offender's child	"out of character" according to defence

Nature of Offence

Clayton, a five-foot, eight-inch weightlifter weighing 197 pounds, had roughed up the much smaller victim and cowed her into submission. Clayton thought the incident was justified because he had been told the victim was seeing another man while he was dating her, the judge said.

SOURCE: "Dartmouth man jailed 9 months for sexual assault," Chronicle-Herald, March 30, 1990

CLAYTON, Floyd	TRIAL	APPEAL
Court	County Court	
Date	October 30, 1990	
Judge	Hon. Ian H.M. Palmeter	
Charge	sexual assault	
Finding/Sentence	9 months	
	VICTIM	OFFENDER
Age	16	19
Relationship	Friend of a friend	
Other Background		Sentenced earlier to consecutive 2-year jail terms for robbery; also awaiting another robbery charge.

Nature of Offence

...she arrived at the Dartmouth apartment of a friend.... The Clayton brothers and others were there drinking beer. One youth, aged 16...took the girl into the bedroom and pinned her to the bed. The girl said the youth then called the Clayton brothers and another minor. She said the Claytons pulled down her pants and underwear, and then assaulted her. She tried to kick them away, but one Clayton had her by each leg, she said. ...pinned down by one of the young offenders while the Clayton brothers sexually assaulted her. She said a fourth man joined in, and she was then penetrated by a beer bottle. She said she was choked when she tried to escape. Finally, the four left.

SOURCES: "Man jailed for sexual assault; brother late," Daily News, October 31, 1990; "North Preston man sentenced for gang sex attack on teen," Chronicle-Herald, October 31, 1990.

CLIFT, Robert William	TRIAL	APPEAL
Court	Provincial Court	
Date	April 25, 1990	
Judge	Hon. Patrick H. Curran	
Charge	Sexual interference	
Finding/Sentence	30 days and 3 years probation	
	VICTIM	OFFENDER
Age	11	67
Relationship		
Other Background		Violated trust, previous conviction of incest and gross indecency

Nature of Offence

Clift led the victim to his bedroom where he rolled on top of her and tried to kiss her. Defence lawyer...added that nothing further happened and no clothing was removed.

SOURCE: "Judge jails repeat sex offender," Chronicle-Herald, April 26, 1990

COOKE, Joseph Bruce	TRIAL	APPEAL
Court	Not available	Nova Scotia Supreme Court
Date	Not available	November 24, 1986
Judge	Hon. Ronald Angus MacDonald	Hon. Lorne O. Clarke
Charge 1 Finding/Sentence	s.246.1 (1)(a) sexual assault 1 year	
Charge 2 Finding/Sentence	s.246.1 (1)(a) sexual assault 1 year	
Charge 3 Finding/Sentence	s.246.1 (1)(a) sexual assault 6 months	Conviction/sentencing set aside (re January 4, 1983, timing); otherwise appeal dismissed.
Charge 4 Finding/Sentence	s.246.1 (1)(a) sexual assault 6 months	
Charge 5 Finding/Sentence	s.246.1 (1)(a) sexual assault 6 months [Total: 3½ years]	[Total: 3 years]
	5 VICTIMS	OFFENDER
Ages	14, 14, 7, 11, 22	27
Relationship		
Other Background		Married with two children; "suffers from a psychosexual disorder labelled heterosexual pedophilia"

Nature of Offence
"All of the assaults involved a variety of unwarranted sexual actions imposed by the appellant upon each female without her consent."

SOURCES: 76 NSR (2d) 52; NSLN 231/8

DEL	TRIAL	APPEAL
Court	County Court #3 (Annapolis Royal)	
Date	May 31, 1988	
Judge	Hon. Charles E. Haliburton	
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	1 year and 1 year probation	
	VICTIM	OFFENDER
Age	12	71
Relationship	Great-niece	
Other Background		Illiterate, ill health (arthritic)
Nature of Offence		
Fondling over a period of two to three months.		

SOURCES: NSR (unreported); NSLN C27/10

DOWNEY, John Albert	TRIAL	APPEAL
Court	Nova Scotia Supreme Court	Nova Scotia Supreme Court
Date	Not available	January 27, 1988
Judge	Hon. William J. Grant	Hon. Ian M. MacKeigan
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	18 months and 1 year probation	27 months "general deterrence"

	VICTIM	OFFENDER
Age		
Relationship		
Other Background		

Nature of Offence

Gang rape, including vaginal and oral penetration. "The learned trial judge accepted the complainant's evidence that Downey and one [other assailant] grabbed her and forced her down and that Downey forced his penis in her mouth while [the other] had vaginal intercourse with her."

SOURCES: 83 NSR (2D) 179; NSLN 253/16

DOWNEY, **Wayne Berry**	TRIAL	APPEAL
Court	County Court	
Date	July 11, 1990 conviction August 21, 1990 sentencing	
Judge	Hon. Felix A. Cacchione	
Charge	Sexual assault	
Finding/Sentence	3 months	
	VICTIM	OFFENDER
Age	13	22
Relationship		
Other Background	Runaway from group home	Was serving 90 days intermittent for break, enter and theft when assault occurred.

Nature of Offence

She testified he raped her after taking them to his sister's apartment for the evening. But the judge decided she had consented. Although she was "coaxed" into a bedroom, he said she went willingly and did not ask for help from her friends, did not try to leave and did not scream. The judge did rule, however, that a second man raped the girl after Downey left the bedroom. He also noted that the sexual assault did not involve force and that "it was a matter of days before the complainant was of an age where consent would have been an issue."

SOURCES: "Consent no excuse in sex case, judge says," Daily News, July 12, 1990; "Downey sentenced to 3 months for sexual assault," Chronicle-Herald, August 22, 1990

DRYSDALE, **William George**	TRIAL	APPEAL
Court	Provincial Court	Nova Scotia Supreme Court
Date	Not available	June 2, 1988
Judge	Hon. William C. Atton	Hon. Leonard L. Pace
Charge 1	s.149 (1) rape	
Finding/Sentence	1 day (deemed served) and 3 years probation	9 months
Charge 2	s.149 (1) rape	
Finding/Sentence	1 day (deemed served)	10 months [Total: 19 months]
	2 VICTIMS	OFFENDER
Ages	6 to 8	54
Relationship	Stepdaughters	
Other Background		Grade 3 education

Nature of Offence

Frequent assaults include oral sex, masturbation, attempted sexual intercourse, starting from ages 6 to 8, for 11 years until they left home. "There was never any penetration of either of the girls and no physical injury was alleged to have been suffered by the victims. However, one of the girls suffered a severe nervous breakdown and it is thought that she has suffered from psychiatric problems for a considerable period of time."

SOURCES: 95 NSR (2d) 98; NSLN 261/6

ELH	TRIAL	APPEAL
Court	County Court #2 (Bridgewater)	Nova Scotia Supreme Court
Date	April 26 and June 11, 1990	December 7, 1990
Judge	Hon. Gerald B. Freeman	Hon. Angus L. Macdonald
Charge	sexual assault	
Finding/Sentence	guilty	Appeal on conviction dismissed
	VICTIM	OFFENDER
Age	11 when assaults began	
Relationship	Step-daughter	
Other Background		
Nature of Offence		

"...the sexual activities started out as fondling and eventually led to full sexual intercourse...the appellant attempted anal intercourse with her but she said she thought that he was unsuccessful." Fondling had been going on for several years.

SOURCES: NSR (unreported); NSLN 304/20

EWC	TRIAL	APPEAL
Court	County Court #2 (Bridgewater)	Nova Scotia Supreme Court
Date	September 1988	May 16, 1989
Judge	Hon. Charles E. Haliburton	Hon. Malachai C. Jones
Charge	Sexual assault	
Finding/Sentence	Guilty/no sentence entered	Set aside the conviction and entered an acquittal. "... the child's evidence was unsatisfactory and contradictory."
	VICTIM	OFFENDER
Age	6	51
Relationship	Daughter	
Other Background		On-going custody dispute over child
Nature of Offence Complainant alleged assaults involved penetration occurring every night. Also kissing, viewing of pornographic films, lying naked on her father.		

SOURCES: NSR (unreported); NSLN 276/26

FADELLE, Steven Darrell	TRIAL	APPEAL
Court	County Court #3	Nova Scotia Supreme Court
Date	Not available	May 29, 1985
Judge	Peter M. Nicholson	Hon. Leonard L. Pace
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	60 days intermittent	Crown appeal on sentence dismissed.
	VICTIM	OFFENDER
Age	12	20
Relationship		
Other Background		"The respondent possessed a grade 12 education and was steadily employed at the time he committed the offence."

Nature of Offence

Attempted sexual intercourse: the assailant took two girls, aged 12 and 15, to a summer camp where they drank wine and smoked marijuana. Later the two went into a bedroom "and he attempted to have sexual intercourse with her. Upon feeling her resistance, he refrained from his pursuit and got up from the bed and left the room."

SOURCES: 69 NSR (2d) 102; NSLN 204/12

FALLE, Frederick George	TRIAL	APPEAL
Court	County Court	
Date	July 30, 1990	
Judge	Hon. Ian H.M. Palmeter	
Charge	Sexual assault	
Finding/Sentence	Not guilty	
	VICTIM	OFFENDER
Age	84	53
Relationship		
Other Background	Possible "rare brain disorder," alcoholic	

Nature of Offence

Victim claimed [the offender] threw her across a room and raped her.... Defence suggested the woman could suffer from a rare brain disorder that affects memory, although he never examined the woman. Judge ruled instead that the elderly woman should have had substantially more bruising than that shown in police photos taken six days after she was allegedly thrown several feet across a room.

SOURCE: "Dartmouth man found not guilty of sexual assault," Chronicle-Herald, July 31, 1990

GRAVES, Gordon Leroy	TRIAL	APPEAL
Court	County Court #4	Nova Scotia Supreme Court
Date	January 21, 1988	May 24, 1988
Judge	Hon. Donald M. Hall	Hon. Angus L. Macdonald
Charge 1	s.246.2 (a) sexual assault with a weapon	
Finding/Sentence	5 years	
Charge 2	s.246.2 (a) sexual assault with a weapon	
Finding/Sentence	5 years	
Charge 3	s.303 theft with weapon	
Finding/Sentence	4 years concurrent [Total: 10 years]	Accused's appeal dismissed
	2 VICTIMS	OFFENDER
Ages	18, 21	21
Relationship		
Other Background		Grade 12 equivalent; on parole when crimes committed
Nature of Offence		
During an after-closing break-in and robbery of a restaurant, two waitresses were assaulted: clothes cut off with knife, fondling, fellatio, blindfolded, hands tied, knife to throat.		

SOURCES: 84 NSR (2d) 321; NSLN 258/19

HARRINGTON, Peter James	TRIAL	APPEAL
Court	County Court	
Date	April 12, 1990, sentencing March 9, 1990, conviction	
Judge	Hon. Ian H.M. Palmeter	
Charge 1	Sexual assault	
Finding/Sentence	2 months	
Charge 2	Sexual assault	
Finding/Sentence	6 months consecutive [Total: 8 months and 2 years probation]	
	2 VICTIMS	OFFENDER
Ages	11, 12	53
Relationship		friend of the family
Other Background		Former newspaper editor, working for a welfare rights group

Nature of Offence

One girl, who is now 12, said Harrington touched her breasts and vaginal area as they watched a pornographic video, and the other, who is now 14, said Harrington rubbed her behind as he gave her a long kiss. "...befriended a low-income family while it was in upheaval to gain its trust, then abused the two girls."

SOURCES: "'Cunning' man found guilty of sex assaults," Daily News, March 10, 1990; "Former editor given 8 months for sex assaults," Daily News, April 13, 1990; "Former editor convicted of sexually assaulting girls," Chronicle-Herald, March 10, 1990

HAWKES, Earl Robert	TRIAL	APPEAL
Court	Provincial Court (Amherst)	Nova Scotia Supreme Court
Date	April 29, 1987	October 1, 1987
Judge	Hon. David E. Cole	Hon. Kenneth M. Matthews
Charge 1	s.246.1 sexual assault	
Finding/Sentence		8 months
Charge 2	s.246.1 sexual assault	
Finding/Sentence	[Total: 60 days intermittent and 2 years probation]	4 months and 2 years probation [Total: 1 year and 2 years probation]
	VICTIMS	OFFENDER
Ages	9, 9	33
Relationship	Friends of the offender's eldest daughter	
Other Background		Married with two female children aged 4 and 9
Nature of Offence		

One victim sexually assaulted three times, another once. "The assaults were mainly of a fondling nature; however, on one occasion, while on a camping trip, the respondent entered the sleeping bag of [one victim], removed the bottom of her pyjamas and placed his penis between her uncovered legs."

SOURCES: 81 NSR (2d) 156; NSLN 245/24

ISENOR, Herbert Wayne	TRIAL	APPEAL
Court	County Court	
Date	March 22, 1990	
Judge	Hon. Felix A. Cacchione	
Charge	Aggravated sexual assault	
Finding/Sentence	10 years	
	VICTIM	OFFENDER
Age		44
Relationship	Friend	
Other Background	Pregnant	"wasn't totally to blame"; professionals didn't help him; alcoholic; prescribed mood-altering drugs by psychiatrist

Nature of Offence

Isenor had a female friend drive him to a motel on the Bedford Highway on the pretence that he was meeting a future employer there. ...after some time, [he] dropped the charade and pulled a knife telling the victim he was going to have sex with her, then kill himself and make her watch. ...five-hour ordeal...Isenor appeared to "freak out" screaming and pulling his hair. She suffered repeated sexual assaults, although they did not include sexual intercourse. ...[he] stabbed her in the thigh.

SOURCES: "'Unstable' man gets 10 years for cruel attack," Daily News, March 23, 1990; "Man given 10-year prison term for attack on pregnant woman," Chronicle-Herald, March 23, 1990

JEB	TRIAL	APPEAL
Court	Nova Scotia Supreme Court	Nova Scotia Supreme Court
Date	February 6-10, 1989	December 1, 1989
Judge	Hon. R.B. MacDonald (and jury)	Hon. Angus L. Macdonald
Charge 1 Finding/Sentence	s.246.1 (1)(a) sexual assault 12 months	
Charge 2 Finding/Sentence	s.157 gross indecency 6 months consecutive	Conviction quashed: "convictions should only have been entered for the more serious offences."
Charge 3 Finding/Sentence	s.246.1 (1)(a) sexual assault 12 months concurrent	
Charge 4 Finding/Sentence	s.246.1 (1)(a) sexual assault 6 months concurrent	
Charge 5 Finding/Sentence	s.246.1 (1)(a) sexual assault 12 months concurrent	
Charge 6 Finding/Sentence	s.157 gross indecency 6 months concurrent	Conviction quashed
Charge 7 Finding/Sentence	s.246.1 (1)(a) sexual assault 7 months concurrent [Total: 18 months]	[Total: 12 months]
	3 VICTIMS	OFFENDER
Ages	7-12, 12, 14	
Relationship	step-daughter, friends of step-daughter	
Other Background		
Nature of Offences		
Step-daughter between 7-12 years old when assaulted: fondling, fellatio, masturbation, oral sex. Friends of step-daughter fondled.		

SOURCES: 94 NSR (2d) 312; NSLN 286/6

JOUDREY	TRIAL	APPEAL
Court	County Court #4	Nova Scotia Supreme Court
Date	Not available	May 27, 1985
Judge	Hon. Donald M. Hall	Hon. Vincent A. Morrison
Charge	s.146 (1) sexual intercourse with person under age 14	
Finding/Sentence	1 year & 1 year parole	Crown appeal on sentence dismissed
	VICTIM	OFFENDER
Age	12	24
Relationship		
Other Background	"was the more sexually experienced of the two" according to sentencing judge	"borderline mentally retarded," prior conviction in 1980 for indecent assault.
Nature of Offence "The act of sexual intercourse was consensual and no violence was involved."		

SOURCES: 68 NSR (2d) 4; NSLN 204/9

KELLY, L.	TRIAL	APPEAL
Court	County Court #4	Nova Scotia Supreme Court
Date	October 25, 1984 (conviction)	September 12, 1985
Judge	Hon. Donald M. Hall	Hon. Angus L. Macdonald
Charge	s.146 (1) sexual intercourse under age 14	
Finding/Sentence	2 years less a day	Appeal on conviction dismissed; sentence reduced to one year
	VICTIM	OFFENDER
Age	(under 14)	52
Relationship		
Other Background		"mentally retarded," grade 3 education
Nature of Offence		
"no force was used by him and...the girl cooperated in the act..."		

SOURCES: 69 NSR (2d) 233; NSLN 207/19

KELLY, R.C.	TRIAL	APPEAL
Court	County Court	Nova Scotia Supreme Court
Date	Not available	June 5, 1985
Judge	Hon. Donald M. Hall	Hon. Malachai C. Jones
Charge 1	s.146 (1) sexual intercourse under 14 years	
Finding/Sentence	2 years	2 years "the total sentence unduly emphasizes the element of deterrence"
Charge 2	s.146 (1) sexual intercourse under 14 years	
Finding/Sentence	2 years	2 years concurrent
Charge 3	s.155 buggery	
Finding/Sentence	1 year [Total: 5 years]	1 year [Total: 3 years)
	3 VICTIMS	OFFENDER
Ages	12, 11, 6	39
Relationship		Had been step-father of one victim
Other Background		Grade 3 education,"low cultural background," "dependable and hard worker"
Nature of Offences Various acts of sexual intercourse, buggery with 3 children (including former step-child) during a summer visit to the children's home in July and August of 1983.		

SOURCES: NSR (unreported); NSLN 204/20

LANGILLE, Robert M.	TRIAL	APPEAL
Court	Provincial Court (Halifax)	Nova Scotia Supreme Court
Date	November 24, 1988	June 8, 1989
Judge	Hon. Elmer J. MacDonald	Hon. Kenneth M. Matthews
Charge	s.153 (a) sexual intercourse with a female ward	
Finding/Sentence	Guilty/no sentence entered	Appeal on conviction dismissed
	VICTIM	OFFENDER
Age	16	
Relationship	Considered offender to be her "Dad" since age 3	Position of trust
Other Background		

Nature of Offence

"She had known the appellant since she was three years of age and considered him to be her "Dad" since that time...." After living in foster homes for several years, she wrote a 'love letter' to the offender, after which "he drove her to his home where they had sexual intercourse."

SOURCES: 91 NSR (2d) 313; NSLN 280/2

LD	TRIAL	APPEAL
Court	Nova Scotia Supreme Court (Sydney)	
Date	November 29, 1989, conviction January 10, 1990, sentencing	
Judge	Hon. Constance Glube (& jury)	
Charge 1 Finding/Sentence	s.246.1 (1)(a) sexual assault 18 months	
Charge 2 Finding/Sentence	s.157 gross indecency 6 months concurrent and 2 years probation [Total: 18 months and 2 years probation (and no contact with victim unless she seeks out the contact herself)]	

	VICTIM	OFFENDER
Age	9-14	40
Relationship	Daughter	
Other Background		Grade 6 education, no previous record

Nature of Offence

Acts of touching and masturbation but no vaginal penetration. Repeated oral sex, etc. Assaults over 5 years, starting when daughter 9 years old. "...continued subjection of a child to unnatural behaviour over a long period of time."

SOURCES: 95 NSR (2d) 310; NSLN (290/18)

LGL	TRIAL	APPEAL
Court	Provincial Court (Digby)	Nova Scotia Supreme Court
Date	May 15, 1989	November 21, 1989
Judge	Hon. John R. Nichols	Hon. Kenneth M. Matthews
Charge	s.155 (2) incest	
Finding/Sentence	90 days intermittent and 3 years probation	15 months and 15 months probation
	VICTIM	OFFENDER
Age	12-16	35
Relationship	Daughter	
Other Background		Married, 2 children, Grade 10 education

Nature of Offence

The assaults started with fondling, continued over time to sexual intercourse. "...the use of force and threats on the part of the father... the conduct continued over a lengthy period of time under reprehensible conditions. This was no isolated incident."

SOURCES: 94 NSR (2d) 60; (284/26)

MacDONALD, John Joseph	TRIAL	APPEAL
Court	Nova Scotia Supreme Court (Sydney)	Nova Scotia Supreme Court
Date	June & August, 1988	April 14, 1989
Judge	Hon. J.D. Hallett (and jury)	Hon. Angus L. Macdonald
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	6 months and 1 year probation prohibited from having firearms	accused's appeal on conviction dismissed
	VICTIM	OFFENDER
Age	18	33
Relationship	Belonged to same church	
Other Background		Married; constable with the Sydney police force, 10 years service

Nature of Offence

While walking to boyfriend's house, the victim was grabbed by the shoulder by the assailant who "told her he was feeling low, pulled her over to the side of the road, exposed his penis and asked her to perform a sexual act (fellatio). She refused. He said that if she didn't do what he said, "I am going to smash you." Just then her boyfriend approached, she called out to him, and the assailant ran off.

SOURCES: NSR (unreported); NSLN 274/26

MacISAAC, Joseph Decoste	TRIAL	APPEAL
Court	County Court #6 (Port Hood)	Nova Scotia Supreme Court
Date	July 7, 1988	November 23, 1988
Judge	Hon. Hugh J. MacPherson	Hon. Angus L. Macdonald
Charge	s.149 (1) rape	
Finding/Sentence	3 months and 1 year probation	Acquittal "...the 29-year delay and the lack of corroboration...justice and fairness dictate an acquittal."
	VICTIM	OFFENDER
Age		
Relationship		
Other Background		
Nature of Offence		
Indecently assaulted young female in 1959		

SOURCES: 87 NSR (2d) 370; NSLN 268/6

MADORE, Clayton Thomas	TRIAL	APPEAL
Court	Not available	Nova Scotia Supreme Court
Date	Not available	October 23, 1985
Judge	Hon. Constance R. Glube	Hon. Gordon L.S. Hart
Charge	s.246.2 (c) sexual assault causing bodily harm	
Finding/Sentence	1 year and 2 years probation	Crown appeal of sentence dismissed
	VICTIM	OFFENDER
Age	19	28
Relationship	Friend of offender's sister	
Other Background		"mentally retarded," alcoholic, steadily employed

Nature of Offence

She was awakened by naked appellant sitting on the sofa where she was sleeping fully clothed. "A struggle ensued, he got on top of her...she was hit on the nose... threats that he was going to kill her... she tried to run to the door...[he] forced her to have sexual intercourse...she tried to choke him...she was able to grab her housecoat, ran out of the apartment, into the street, stopped a passing taxi and the taxi driver took her to the police station.

SOURCES: 70 NSR (2d)86; NSLN 211/18

MARCHAND, Ronald William	TRIAL	APPEAL
Court	Provincial Court (Bedford)	
Date	January 24, 1990	
Judge	Hon. Patrick H. Curran	
Charge	sexual interference	
Finding/Sentence	2 months and 2 years probation	
	VICTIM	OFFENDER
Age	2½	40
Relationship		
Other Background	"no long-term effects"	"drinking heavily the night before" first-time offender

Nature of Offence

Marchand was calling the girl repeatedly and inviting her to touch him. He was discovered with the girl by a relative. "...a serious act of perversion."

SOURCE: "Assaulted girl, 2½," Daily News, January 25, 1990

MC	TRIAL	APPEAL
Court	County Court #2 (Lunenburg)	Nova Scotia Supreme Court
Date	March 6 & April 28, 1987	November 24, 1987
Judge	Hon. L.L. Clements	Hon. Angus L. Macdonald
Charge	Indecent assault	
Finding/Sentence	2 years less a day and 2 years probation	10 months and 1 year probation "[Trial judge erred in] excluding rehabilitation as a factor to be considered because the appellant had shown no remorse." The appeal judge then quoted a case wherein the judge had said, "An innocent person, of course, has nothing to be remorseful about."
	VICTIM	OFFENDER
Age	9	38
Relationship	Daughter	Father
Other Background		No criminal record
Nature of Offence "...the vaginal touching was somewhat at the low end of the spectrum." "...on one occasion her father put his hands down her shorts and on her vagina. The second incident...again consisted of her father touching her vagina. The girl went on to say there were "other occasions," but was unable to give any details of them."		

SOURCES: 81 NSR (2d) 380; NSLN 249/13

McCLEMENT, David Ecland	TRIAL	APPEAL
Court	Nova Scotia Supreme Court (Halifax)	Nova Scotia Supreme Court
Date	June 15, 1988	November 22, 1988
Judge	Hon. R.B. MacDonald	Hon. Gordon L.S. Hart
Charge 1	Sexual assault (sexual intercourse)	
Finding/Sentence		12 months
Charge 2	Sexual assault (attempted intercourse)	
Finding/Sentence	[Total: 90 days intermittent and 21 months probation]	4 months consecutive [Total: 16 months and 21 months probation] "...sentence imposed was inadequate from the point of view of general deterrence."
	VICTIM	OFFENDER
Age	13	37
Relationship	Sister-in-law	
Other Background	Suggested "sexually precocious" by defence counsel	Married, two daughters aged 12 and 13

Nature of Offences

"The first count involves sexual assault early one morning while the victim was visiting the respondent's home.... The second count...stopped short of intercourse when the accused's daughter sleeping in the same room began to stir."

SOURCES: 87 NSR (2d) 269; NSLN 268/3

McGRAW, **Gary Peter**	TRIAL	APPEAL
Court	Nova Scotia Supreme Court	Nova Scotia Supreme Court
Date	July 16, 1990	January 24, 1991
Judge	Hon. William J. Grant (& jury)	Hon. Lorne O. Clarke
Charge 1 Finding/Sentence	Sexual assault No verdict by jury	
Charge 2 Finding/Sentence	Sexual assault No verdict by jury	
Charge 3 Finding/Sentence	Touching for a sexual purpose 9 months	
Charge 4 Finding/Sentence	Touching for a sexual purpose Charge dropped [Total: 9 months with periodic leaves to attend to business]	Appeal on conviction and sentence dismissed
	VICTIM	OFFENDER
Age	16 at time of assault	39
Relationship	Employee	
Other Background		Halifax businessman

Nature of Offence

McGraw began kissing her and fondling her breasts. McGraw exposed himself and the incident ended when she refused to perform a sexual act. McGraw asked her if she had ever made love to a man and when she replied no, asked her if she would like to make love to him. She did not report the incident because she thought she might get fired.

SOURCES: "Girl says boss wanted sex in the storeroom," Daily News, May 24, 1990; "Appeal rejected," Daily News, January 25, 1991

MELNICK, William Thomas	TRIAL	APPEAL
Court	Provincial Court, Sydney River	Nova Scotia Supreme Court
Date	December 7, 1987	March 30, 1988
Judge	Hon. Charles O'Connell	Hon. Gordon L.S. Hart
Charge	s.246.1 sexual assault	
Finding/Sentence	6½ years	Appeal on conviction dismissed

	VICTIM	OFFENDER
Age		
Relationship		
Other Background	Parolee, resident of half-way house	Parolee, resident of half-way house

Nature of Offence

"She left a friend's house where both had spent the evening and a short time later the appellant followed and caught up with her. She then claims that he forced her to have intercourse behind some bushes without her consent."

SOURCES: NSR (unreported); NSLN 256/12

MER	TRIAL	APPEAL
Court	County Court #2	Nova Scotia Supreme Court
Date	January 26, 1989	June 23, 1989
Judge	Hon. Gerald B. Freeman	Hon. Angus L. Macdonald
Charge	sexual assault	
Finding/Sentence	suspended sentence and 2 years probation	Crown appeal on sentence dismissed. (Quoted Justice Freeman: "thinking processes...blurred by alcohol... suffered a great deal of emotional pain....")
	VICTIM	OFFENDER
Age	5-10	56
Relationship	granddaughter	
Other Background		Grade 4 education, alcoholic
Nature of Offence The assaults started when the girl was 5 and continued for five years: sexual touching, fondling of genitals.		

SOURCES: NSR (unreported); NSLN 280/12

O'BRIEN, John Arthur	TRIAL	APPEAL
Court	Provincial Court, Truro	Nova Scotia Supreme Court
Date	May 22, 29, 1987	February 11, 1988
Judge	Hon. Robert Stroud	Hon. David R. Chipman
Charge	s.246.2 (a) sexual assault with a weapon	
Finding/Sentence	3 years	Appeal on conviction dismissed
	VICTIM	OFFENDER
Age		
Relationship		
Other Background		

Nature of Offence

"The complainant said that the accused and she went into the park where the acts complained of took place. ...the complainant [then] ran up to the house, roused a commotion and broke a window. The appellant quickly departed." [Note: this offender later known as the "motorcycle rapist."]

SOURCES: NSR (unreported); NSLN 254/1

Publication Ban No. 1	TRIAL	APPEAL
Court	County Court	
Date	January 4, 1990	
Judge	Hon. N. Robert Anderson	
Charge	Sexual assault	
Finding/Sentence	90 days intermittent	
	VICTIM	OFFENDER
Age	Teenager	58
Relationship	Daughter	
Other Background	Handicapped	
Nature of Offence "...the man entered his daughter's bedroom twice and fondled her breasts and vagina underneath her night clothes. The victim, who was handicapped, was particularly vulnerable in this case."		

SOURCE: "Man jailed for sex assault," Chronicle-Herald, January 5, 1990

Publication Ban No. 2	TRIAL	APPEAL
Court	County Court	
Date	February 22, 1991	
Judge	Hon. Nancy Bateman	
Charge	Touching for sexual purpose	
Finding/Sentence	Dismissed	
	VICTIM	OFFENDER
Age	13	
Relationship	Employee	
Other Background		Video store owner

Nature of Offence

The 13-year-old testified that during two tickling episodes the employer touched her breasts. The man said he touched the girl's breasts once by accident. "It's not enough that I think his behaviour was objectionable and inappropriate," said Judge Bateman. "I must be satisfied he had the requisite intent."

SOURCE: "Judge dismisses sex charge," Chronicle-Herald, February 23, 1991

RANDALL, Robert James	TRIAL	APPEAL
Court	Not available	Nova Scotia Supreme Court
Date	April 17, 1986 (sentencing)	November 19, 1986
Judge	Not available	Hon. Lorne O. Clarke
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	Suspended sentence and 2 years probation and community service	1 year and 2 years probation, no community service [Sentence increased to] "place sufficient emphasis upon the element of general deterrence."
	VICTIM	OFFENDER
Age	12 (male)	55 (male)
Relationship		
Other Background		Gave money and gifts to boy who visited him regularly
Nature of Offence		
The accused committed buggery twice and attempted fellatio once.		

SOURCES: 75 NSR (2d) 416; NSNL 231/3

RGR	TRIAL	APPEAL
Court	Provincial Court (Amherst)	Nova Scotia Supreme Court
Date	May 10, July 20, 1988	January 10, 1989
Judge	Hon. David E. Cole	Hon. Kenneth M. Matthews
Charge 1 Finding/Sentence	s.150 incest 20 months	1 year, 4 months
Charge 2 Finding/Sentence	s.150 incest 20 months concurrent	1 year, 4 months
Charge 3 Finding/Sentence	s.150 incest 20 months concurrent	1 year, 4 months
Charge 4 Finding/Sentence	s.246.1 (1)(a) sexual assault 20 months concurrent [Total: 20 months and 3 years probation]	1 year [Total: 5 years]
	4 VICTIMS	OFFENDER
Ages	10-13	44 at time of sentencing
Relationship	Step-daughter, 3 daughters	
Other Background		"...more than his share of sexual appetite" according to trial judge. A "conscientious" employee.

Nature of Offence

Three daughters fondled when young, then assaults included sexual intercourse (from 1969-80, 1968-80, 1971-81). Step-daughter fondled over 3 years starting at age 10.

SOURCES: 88 NSR (2d) 364; NSLN 270/8

SAMPSON, Marshall Lawrence	TRIAL	APPEAL
Court	Provincial Court (Halifax)	
Date	January 17, 1990	
Judge	Hon. G. Hughes Randall	
Charge 1	Sexual assault	
Finding/Sentence		
Charge 2	Unlawful confinement	
Finding/Sentence	[Total: 3½ years]	
	VICTIM	OFFENDER
Age		28
Relationship		
Other Background		Incident a "plea for help" according to defence; alcoholic

Nature of Offence

...asked the woman if he could use her telephone. When she allowed Sampson into her apartment, he made two calls but then refused to leave. ...the woman tried to get out of the apartment repeatedly but Sampson restrained her and took the telephone away from her when she attempted to call for help. During the ordeal, which lasted from about midnight to 8 a.m., Sampson forced the woman to perform oral sex, called her names and threatened to kill her. The woman finally convinced the man she had to go to work and he allowed her to leave.

SOURCE: "Sexual assault brings 42-month sentence," Chronicle-Herald, January 18, 1990

SHEPPARD, Clyde William	TRIAL	APPEAL
Court	Nova Scotia Supreme Court	
Date	April 12, 1990	
Judge	Hon. Robert B. MacDonald	
Charge 1	Sexual assault	
Finding/Sentence	Not guilty	
Charge 2	Sexual assault	
Finding/Sentence	Not guilty	
	VICTIM	OFFENDER
Age	19	20
Relationship		Former boyfriend, friend of victim's father
Other Background	"slow learner"	"slow learner"

Nature of Offence

On December 8, Sheppard placed his hand on her thigh when her father was out. On the evening of December 10, she said Sheppard came to her bedroom after chatting with her father and sat down and began a conversation with her. The complainant said she asked Sheppard to leave, but he refused and forced her onto her bed, where he had sexual intercourse with her. "...considering the past relationship of the complainant and the accused, the first incident could not be considered assault.... Mr. Justice MacDonald said the although he believed the complainant was a credible witness, the Crown failed to prove beyond a reasonable doubt that the sexual intercourse took place without the complainant's consent."

SOURCE: "Former boyfriend accused of assault," Chronicle-Herald, April 12, 1990; "Halifax man acquitted of sex assault charges," Chronicle-Herald, April 13, 1990

SHUNAMON	TRIAL	APPEAL
Court	Provincial Court	Nova Scotia Supreme Court
Date	Not available	November 19, 1986
Judge	Hon. Ross B. Archibald	Hon. Kenneth M. Matthews
Charge 1 Finding/Sentence	s.246.1 (1)(a) sexual assault 7 years	4 years
Charge 2 Finding/Sentence	s.157 gross indecency 3 years concurrent [Total: 7 years]	2 years concurrent [Total: 4 years] "[The trial judge] overemphasized the element of specific deterrence."
	VICTIM	OFFENDER
Age	17	24
Relationship		
Other Background	"greatly diminished intelligence"	At time of sentence, was serving 5 months for indecently exposing himself to a young boy.

Nature of Offences

The appellant stopped her and asked her to perform oral sex on him. She refused saying she had to go to school. The appellant held her arm. The victim then complied to his demand for approximately two minutes. He then laid the girl on the ground, took down her pants and attempted to have sexual intercourse with her during which she stated that she would be late for school. The appellant then permitted her to get up and go to school. The girl did not complain to anyone until she informed her grandmother upon her return from school.

SOURCES: 75 NSR (2d) 393; NSLN 231/2

SMITH, **Robert Wayne**	TRIAL	APPEAL
Court	County Court #7	Nova Scotia Supreme Court
Date	Not available	February 13, 1987
Judge	Hon. Murray J. Ryan	Hon. Gordon L.S. Hart
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	6 months	1 year "...the trial judge underestimated the need for deterrence of persons who commit crimes of this sort against young girls."

	VICTIM	OFFENDER
Age	13	20
Relationship	Baby-sitter of offender's sister's children	
Other Background		Alcohol problems, no prior record, employed on fishing vessel at time
Nature of Offence "He had a severe alcohol problem and arrived at his sister's house while under the influence and it was here that the offence occurred."		

SOURCE: 77 NSR (2d) 76

SPARKS	TRIAL	APPEAL
Court	Not available	Nova Scotia Supreme Court
Date	Not available	September 17, 1986
Judge	Hon. F.B.W. Kelly (and jury)	Hon. Kenneth M. Matthews
Charge	s.246.2 (c) sexual assault causing bodily harm	
Finding/Sentence	7 years	4 years
	VICTIM	OFFENDER
Age		37
Relationship	Acquaintance	
Other Background		Previous convictions for armed robbery and assault causing bodily harm

Nature of Offence

The victim invited the appellant, whom she had met approximately one hour before, to her room to drink rum at about 4 a.m. "...the appellant struck the victim in the face and choked her.... The appellant used force to obtain his will."

SOURCES: 75 NSR (2d) 91; NSLN 225/22

THEOHARPOLOUS, John	TRIAL	APPEAL
Court	County Court	
Date	February 9, 1990	
Judge	Hon. Ian H.M. Palmeter	
Charge 1 Finding/Sentence	Sexual assault under age 14	
Charge 2 Finding/Sentence	Sexual assault under age 14	
Charge 3 Finding/Sentence	Sexual assault under age 14 [Total: suspended sentence, 3 years probation, 400 hours community service] Palmeter: "Community condemnation has had more of an effect than anything I can impose...."	
	VICTIM	OFFENDER
Age	12	36
Relationship	Baby-sitter	
Other Background	"obviously agreed to the acts."	"a hard worker, had a wife and 4 children to support and had a good job."
Nature of Offence "It is clear from the evidence that all of the sexual acts...were with the consent of both parties."		

SOURCE: "Probation for crush-sex man," Daily News, February 10, 1990

THURSTON, Kenneth Alfred	TRIAL	APPEAL
Court	County Court	
Date	August 22, 1990	
Judge	Hon. Felix A. Cacchione	
Charge	Sexual assault	
Finding/Sentence	90 days intermittent and 2 years probation	
	VICTIM	OFFENDER
Age	53	28
Relationship		
Other Background		Former cab-driver

Nature of Offence

Thurston went to the woman's apartment claiming she had left a key inside his cab. When she said she hadn't, Thurston grabbed her by the arm and demanded to use her phone. Thurston then forced her into the bedroom and made her perform oral sex while a visiting neighbour watched TV in her kitchen. Police arrested Thurston when he returned to the apartment 45 minutes later.

SOURCE: "Driver gets 90 days for forcing woman into sex act," Daily News, August 23, 1990

WAREHAM, Christopher	TRIAL	APPEAL
Court	County Court (Halifax)	
Date	March 25, 1991	
Judge	Hon. Ian H.M. Palmeter	
Charge 1 Finding/Sentence	Sexual assault Guilty	
Charge 2 Finding/Sentence	Unlawful confinement Guilty	
Charge 3 Finding/Sentence	Uttering threats Guilty [Total: 3 years]	
	VICTIM	OFFENDER
Age		23
Relationship	Met a week prior	
Other Background	Former prostitute, 20 weeks pregnant	Worked as a bouncer; lengthy criminal record, including a 1988 sexual assault for which he received a 2-year jail term

Nature of Offence

...the two walked to the Gerrish Towers apartment building, where an acquaintance of Wareham's lived. Instead of returning to the lobby, Wareham pushed the button to take them to the parking garage. He began to kiss and fondle her, with her consent, but it began to hurt so she asked him to stop. He did, but wouldn't let her go, she said. The woman said Wareham threatened to beat, rape and kill her. She said Wareham agreed to let her go if she had sexual intercourse with him. They went to a janitorial room and had sex, but after a few minutes her back became sore and she asked him to stop. He did. He denied threatening to beat, rape and kill her or throwing her twice against the wall.

SOURCES: "Bouncer forced sex on pregnant woman," Daily News, March 26, 1991; "Man found guilty of sexual assault," Chronicle-Herald, March 26, 1991

WDP	TRIAL	APPEAL
Court	Provincial Court	Nova Scotia Supreme Court
Date	Not available	December 13, 1987
Judge	Not available	Hon. Ian M. MacKeigan
Charge 1 Finding/Sentence	s.246.1 (1)(a) sexual assault 90 days intermittent	conviction quashed (re January 4, 1983 timing, change in law)
Charge 2 Finding/Sentence	s.246.1 sexual assault 90 days concurrent	12 months
Charge 3 Finding/Sentence	s.246.1 sexual assault 90 days concurrent	4 months consecutive
Charge 4 Finding/Sentence	s.246.1 sexual assault 90 days concurrent [Total: 90 days intermittent and 3 years probation]	4 months consecutive [Total: 20 months]
	4 VICTIMS	OFFENDER
Ages	13-16	40
Relationship	2 daughters and 2 14-year-old friends of daughter	
Other Background		"...respondent had been reprimanded by Family and Children's Services and...he had been attending the Mental Health Clinic."

Nature of Offences
"No evidence was given at the sentencing hearing but sketchy details of the facts were recited in brief statements by the prosecuting counsel before the sentencing judge." First daughter: fondling to full sexual intercourse; second daughter: fondling, reported to Family and Children's Services who reported to police; two 14-year-olds, one stopped going over to friend's house. Offences occurred from 1980-1986.

SOURCES: 82 NSR (2d) 81; NSLN 250/19

WHITE, **Dennis Earl**	TRIAL	APPEAL
Court	County Court #1	Nova Scotia Supreme Court
Date	June 23, 1988	January 24, 1989
Judge	Hon. N.Robert Anderson	Hon. Angus L. Macdonald
Charge 1	s.245.1 (1)(a) assault with a weapon	
Finding/Sentence	1 year	2 years
Charge 2	s.246.2 (a) sexual assault with a weapon	
Finding/Sentence	3 years	5 years
Charge 3	s.247 (2) unlawful confinement	
Finding/Sentence	3 years concurrent [Total: 4 years]	3 years concurrent [Total: 7 years]
	2 VICTIMS	OFFENDER
Ages	21, 15	31
Relationship		
Other Background	21-year-old walking to work; 15-year-old walking home from friend's house	Grade 9 education "high level of sexual curiosity and desire" according to defence expert

Nature of Offences
"...at approximately 8:35 a.m., the respondent grabbed [a 21-year-old women walking to work] from behind and then said: "Come with me, I've got a knife." [She] put up a struggle and the respondent, after dragging her a short distance, ran away when a truck approached...." "The second and third offences occurred "when the respondent, wearing a ski mask, came up behind [a 15-year-old walking to friend's], grabbed her and put a knife to her throat. [In the car, he raped her,] "committed an act of gross indecency and followed that by raping her again."

SOURCES: 88 NSR (2d) 414; NSLN 270/22

WILLIAMS	TRIAL	APPEAL
Court	Provincial Court	Nova Scotia Supreme Court
Date	Not available	October 11, 1983
Judge	Hon. Kenneth L. Crowell	Hon. Leonard L. Pace
Charge 1	s.246.1 (a) sexual assault	
Finding/Sentence	2 years	2 years
Charge 2	s.246.2 (c) sexual assault causing bodily harm	
Finding/Sentence	8 years consecutive [Total: 10 years]	5 years consecutive [Total: 7 years] "...a total sentence of 10 years against this youthful first offender may defeat the very purpose of a custodial sentence."

	VICTIM	OFFENDER
Age	60	20
Relationship		Friend of victim's brother
Other Background	Farmer	Grade 8 education; under influence of alcohol and drugs

Nature of Offence

"The appellant gained entrance...by asking to use the telephone.... He came up behind the complainant and put his hand over her mouth. He then proceeded to tear all the clothing off [her] and attempted to have sexual intercourse with her. This assault was accompanied by considerable violence...and continued over a period of 1½ hours. It would appear that the only reason he did not accomplish his stated objective of having sexual intercourse with the victim was the fact that [she] resisted all of his efforts. As a result, the victim was battered and bruised and needed hospital and medical treatment. The victim...was 60 years old and lived alone on a farm which she cultivated."

SOURCES: 60 NSR (2d) 29; NSLN (247/5)

WJF	TRIAL	APPEAL
Court	County Court #1	Nova Scotia Supreme Court
Date	February 2, 1986	June 19, 1986
Judge	Hon. N. Robert Anderson	Hon. Angus L. Macdonald
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	Not available (exceeds 2 years imprisonment)	2 years and 3 years probation "The present sentence is illegal in that probation is in conjunction with a term of imprisonment that exceeds two years."

	VICTIM	OFFENDER
Age	10	40 (at time of appeal)
Relationship	Step-daughter	
Other Background		Grade 4 education; [Doctor is quoted:] "...heavy drinking...since he learned his wife was seeing other men...."

Nature of Offence

Assaults included sexual intercourse, anal and oral sex. Activities involved his touching of her breast area, her vaginal area, penetration with fingers, to sexual intercourse on numerous occasions. Also anal intercourse and the victim performing oral intercourse on the offender.

SOURCES: NSR (unreported); NSLN 223/23

WOOD, **Darrell Charles David**	TRIAL	APPEAL
Court	Provincial Court (Parrsboro)	Supreme Court of Nova Scotia
Date	February 11, 1986	June 6, 1986
Judge	Hon. David E. Cole	Hon. Lorne O. Clarke
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	6 months and 2 years probation	2 years and 1 year probation
	VICTIM	OFFENDER
Age	3½	23
Relationship		Baby-sitter (friend of girl's uncle)
Other Background		
Nature of Offence "The respondent took the child... to the woods...[where he sexually assaulted her]. The assault "did not include intercourse."		

SOURCES: 74 NSR (2d) 31; NSLN 223/13

WORKS, Daniel (Dana) Andrew	TRIAL	APPEAL
Court	County Court #4	Nova Scotia Supreme Court
Date	April 19, 1990	January 3, 1991
Judge	Hon. Donald M. Hall	Hon. Kenneth M. Matthews
Charge	s.271 (1)(a) sexual assault	
Finding/Sentence	Suspended sentence, 3 years probation, 500 hours community service	8 months (Justice Hallett, dissenting: "a fit sentence is one that falls within a reasonable range as established by the cases" [he recommended 90 days intermittent])
	VICTIM	OFFENDER
Age		27
Relationship	Friends/neighbours	
Other Background		

Nature of Offence

Two couples went out for the evening and returned to the victim's apartment. The women talked in the kitchen, the men fell asleep in the living room. The woman friend went down to the apartment she shared with the accused, the victim went to bed. "She awoke to find that her clothing had been removed and that the respondent had his head between her legs, performing oral sex...she pushed him away....told him to get out.... He then got on top of her, held down her arms while she struggled, attempted to get her legs apart and have sexual intercourse with her. He ejaculated over her legs."

SOURCES: NSR (unreported); NSLN 304/30

ZWICKER, Douglas Arnold	TRIAL	APPEAL
Court	County Court #2 (Bridgewater)	
Date	February 27, 1990	
Judge	Hon. Gerald B. Freeman	
Charge	s.246.1 (1)(a) sexual assault	
Finding/Sentence	Not guilty	
	VICTIM	OFFENDER
Age	13	18
Relationship		Former boyfriend
Other Background	Lived in foster homes with accused.	

Nature of Offence

...the complainant frankly acknowledged that she was a willing participant in sexual intercourse with the accused during the early part of their relationship,... but she says she gradually cooled toward him as he became more aggressive in his demands. He denied her allegations of bizarre acts, of proceeding with intercourse despite her refusals, or of obtaining her consent by threats against her sister." "...I do not find...that she had in any effective way withdrawn the consent she had initially given to their relationship."

SOURCES: 96 NSR (2d) 195; NSLN C31/11

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